

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-22538-RKA

PIERCE ROBERTSON, *et al.*,

Miami, Florida

Plaintiff(s),

December 20, 2022

vs.

MARK CUBAN, *et al.*,

Defendant(s).

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DISCOVERY HEARING
TRANSCRIBED FROM DIGITAL AUDIO RECORDING
BEFORE THE HONORABLE LISETTE M. REID
UNITED STATES MAGISTRATE JUDGE

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1 Thereupon,

2 the following proceedings were held via Zoom videoconference:

3 THE COURT: Good afternoon, everyone.

4 All right. Thank you, everyone.

5 This is a discovery dispute hearing in this case. So
6 what I want to do is start with appearances of counsel. Let's
7 start with the plaintiff.

8 MR. MOSKOWITZ: Good afternoon, your Honor. This is
9 Adam Moskowitz, from the Moskowitz Law Firm, and with me from
10 my firm is my partner Joey Kaye.

11 MR. BOIES: Good afternoon, your Honor. This is David
12 Boies, of Boies Schiller Flexner, and with me is my partner
13 Steve Zack.

14 MR. ZACK: Hello, your Honor.

15 THE COURT: Very good.

16 OK. I still see a number of faces.

17 MR. BEST: Your Honor, this is Stephen Best, from the
18 law firm of Brown Rudnick, appearing on behalf of the
19 defendants Mark Cuban and the Dallas Mavericks. Along with me
20 is Sigmund Wissner-Gross, my partner, as well as my partner
21 Rachel Wolkinson.

22 THE COURT: OK. Very good. Welcome.

23 Is that everyone?

24 MR. BEST: No. We have local counsel as well, your
25 Honor.

1 MS. TIFFORD: Good afternoon, your Honor. This is
2 Alexandra Tifford on behalf of Fowler White Burnett. As
3 Mr. Best described, we are local counsel. My partner,
4 Christopher Knight, likewise either is on or should be joining
5 momentarily.

6 MR. BEST: We don't have to wait, your Honor.

7 THE COURT: OK. I see my law clerk is here.

8 I am trying to make sure I know who all the other
9 attendees are.

10 MS. MEYERS: Good afternoon, your Honor. This is
11 Jessica Meyers. I'm also from Brown Rudnick.

12 THE COURT: OK. Very good.

13 MR. SHINDLER: And good afternoon, your Honor. This
14 is Ronald Shindler, from Fowler White.

15 THE COURT: Who do you represent, sir?

16 MR. SHINDLER: Defendants.

17 THE COURT: Defendants. OK. All right. Very good.

18 More people coming in. OK. So we will give them a
19 few seconds.

20 MR. KNIGHT: Good afternoon, your Honor. Christopher
21 Knight.

22 THE COURT: Good afternoon. Thank you.

23 So I have the list of issues that were sent initially
24 and then the list that was sent, was it yesterday?

25 MR. BEST: Yes, your Honor.

1 THE COURT: After the parties had had a chance to meet
2 and confer.

3 Selection of the mediator has already occurred. So
4 that is good.

5 Let me hear first from the plaintiffs as to what you
6 want to address today and then from the defendants as to what
7 you want to address, and then we can decide what can be done
8 today.

9 MR. MOSKOWITZ: Thank you so much, your Honor. This
10 is Adam Moskowitz. I am going to just be very brief for the
11 plaintiffs, maybe five, ten minutes, just to kind of give you a
12 little bit of the background.

13 I know this is our first hearing before your Honor, so
14 I will give you a little background, tell you exactly where we
15 are, where we have our differences, and then I am going to turn
16 it over to Mr. Boies, who is going to say just a few other
17 words as well.

18 First let me thank you so much on behalf of hundreds
19 of our clients across the country because they have all been
20 tracking the case carefully and we are so honored to finally
21 have a discovery hearing. We had our first hearing with Judge
22 Altman a few weeks ago where he denied the stay. So we are so
23 grateful to have this hearing with your Honor because we are
24 the only case out there about Voyager that is pending in the
25 country. So this is really the only avenue for all those

1 people.

2 My partner, Joey Kaye, is going to show a few slides
3 and I will kind of go through the background.

4 Why don't you start, Joey, and we can move them
5 expeditiously.

6 So this is our presentation.

7 Why don't you make it full screen. Great.

8 Let's go to the first one.

9 So, your Honor, we are looking at about a year, a year
10 ago -- this has been a long battle. It is not something that
11 just started. A year ago we filed a class action on behalf of
12 all of the same Voyager customers we have today, and it was
13 assigned to Chief Judge Altonaga.

14 We sued Voyager for various different allegations. We
15 spent a good portion of the allegations specifically about
16 Mr. Cuban and about the Mavericks, and it made newspapers all
17 around the country, obviously, and it made a lot of
18 international papers, because we said that Mr. Cuban and the
19 Mavericks were assisting in this fraud that we alleged, and we
20 actually said that if Voyager will agree to end these interest
21 accounts, which we believe the SEC has already ruled are
22 securities, we would be willing not to take attorneys' fees in
23 this case because our real relief was let's try to help these
24 people and let's try to help them out of this situation because
25 we saw the writing on the wall.

1 Voyager was not doing well, although they were citing
2 billions and billions in revenue. We knew something was going
3 to happen quick, so we needed some quick action. Judge
4 Altonaga was wonderful in terms of moving the case quickly
5 before the company went bankrupt, which stayed us for about six
6 months.

7 When we first filed, there is no dispute that
8 Mr. Cuban and the Mavericks, they knew and they anticipated
9 litigation was going to be filed. So the first thing that
10 Voyager did is exactly like this case. Voyager Digital filed a
11 motion saying there is a lack of personal jurisdiction between
12 Florida and Voyager. They said there is no connection between
13 Voyager and Florida.

14 So Judge Altonaga heard the arguments and she said:
15 Under these facts where you have allegations of a connection,
16 you always allow depositions in discovery.

17 Ironically, we took the deposition of the Voyager
18 declarant and it was just the opposite. Florida turned out to
19 be one of the largest states where they were getting most of
20 their revenue. So it clearly showed that these declarations
21 were not true.

22 Next slide.

23 So really what did Judge Altonaga rule? Judge
24 Altonaga looked at the Eleventh Circuit law and she said: It's
25 well established that the Eleventh Circuit recognizes the right

1 to conduct limited jurisdictional discovery. She said: Once
2 jurisdictional facts are disputed, the court does not have
3 discretion to grant or deny the request; rather, the element of
4 discretion, if any, exists with respect to the forum that that
5 discovery will take, and she ordered Voyager to immediately
6 make available those specific declarants who provided their
7 sworn declarations in support of the motion to dismiss, and she
8 provided us with discovery. So that is the basis and what the
9 track record is of what has been going on about a year ago.

10 So now in this case we were shocked, frankly, to get a
11 motion for lack of jurisdiction, and for some reason these
12 lawyers decided to make it from Mr. Cuban himself. In Voyager
13 we got it from one of their employees. We didn't get it from
14 the top, top of the gun. But here, they decided that Mr. Cuban
15 was going to make a sworn declaration.

16 We read it with complete shock. It said: At no time
17 have I done anything with or in connection with Voyager in
18 Florida; none of my visits to Florida had any connection to
19 Voyager; and I only own two vacation homes, and we have
20 estimated the values about \$40 billion. This really caused us
21 some concern because of what we already know and which isn't
22 disputed.

23 In our actual complaint, unlike the one case that the
24 defendants cite where they didn't make any allegations of
25 jurisdiction, we go through countless paragraphs showing that

1 Mark Cuban was actually doing a press conference with Voyager,
2 invited all of the international media to that conference, said
3 the Voyager Mavericks partner was going to be a leader, and he
4 said it is going to be a leader around the country. Not just
5 in Dallas or not in the local area; he said it is going to be
6 in Florida. He said: Any resident who purchased any of these
7 Bitcoin products would be matched \$100, including people in
8 Florida. If you open up a Voyager account and you type in the
9 Mark Cuban code, you get \$100 into your account paid by the
10 Mavericks.

11 We make many other allegations that Florida residents
12 specifically bought these products because they heard Mark
13 Cuban's conference.

14 Now in this case we are alleging that these interest
15 accounts, that every Voyager customer had, were all securities.
16 In 2017 the SEC said, we think they are securities. So our
17 case is anyone who promotes them is strictly liable. It is
18 that simple. It is not a crazy case. It is not something that
19 is going to last ten years. It is just did Mark Cuban promote
20 this product that is an unregistered security.

21 For jurisdiction we make, I think, 14 allegations in
22 the complaint about his connection to Florida, how he said he
23 wants to make this around the country, how he let Florida
24 residents buy these Bitcoin promotions. So of course, there is
25 a connection between Mark Cuban and Florida.

1 It didn't stop there. He actually had, Mark Cuban, an
2 international press conference on October 27, 2021 where he put
3 it over the internet, where people in Miami, Florida, all
4 watched it. We want to just show you one minute of what he
5 told the country in terms of expecting other people to believe
6 that Voyager was coming into their community.

7 THE COURT: Well, Mr. Moskowitz, I appreciate the
8 presentation, but are we going to be talking about a stay
9 pending discovery? I think that's already been ruled on --

10 MR. MOSKOWITZ: Yes, your Honor.

11 THE COURT: -- in terms of the motion to dismiss.

12 MR. MOSKOWITZ: The defendants didn't produce any
13 discovery. They objected to everything, and they said
14 everything should be stayed pending the motion to dismiss.

15 THE COURT: And Judge Altman already ruled on that,
16 right?

17 MR. MOSKOWITZ: Yes, your Honor. Judge Altman, in a
18 very extensive order, said: I peeked at the merits. I think
19 there is a claim here. I don't believe any discovery should be
20 stayed. And in fact, he said: I don't see any basis for even
21 a protective order.

22 THE COURT: OK.

23 MR. MOSKOWITZ: So as we are right now, Judge Altman
24 said: I haven't seen any evidence that we need a
25 confidentiality or protective order.

1 We are being nice saying we will agree to the one we
2 had in the Voyager case, and I'll explain it, but what Judge
3 Altman said is: You have presented nothing to justify a stay,
4 so I'm going to allow discovery. And we had Mark Cuban,
5 because he is a defendant, we had him noticed for deposition
6 three months ago. We asked for a date. They said we are not
7 going to give you anything because we are going to win our
8 motion to stay. I said, if you don't win your motion to stay,
9 could you please give us some alternate dates, and we didn't
10 get any.

11 THE COURT: OK.

12 MR. MOSKOWITZ: So here we are now and we have a
13 motion to dismiss on personal jurisdiction. They decided to
14 give the sworn declaration of Mark Cuban. They could have
15 picked anybody, but they picked Mark Cuban.

16 He makes these statements that we believe are not
17 true. They are not accurate. He had this press conference,
18 that we will show you, with Steve Ehrlich, about Voyager. Then
19 we are going to show you that he came back to Miami.

20 This isn't in his declaration. That is what makes it
21 extremely questionable. I think it's very, very -- I don't
22 know what the word is -- it is very risky for a lawyer to get
23 his client saying I've never discussed Voyager in Miami when
24 two months after this international press conference, as you
25 will see, he comes back to Miami to be the keynote speaker, and

1 Steve Ehrlich from Voyager is there.

2 So, Joey, why don't you just show one of these clips
3 quickly.

4 MR. WISSNER-GROSS: Your Honor, your Honor, Sigmund
5 Wissner-Gross. I think that has really gone a bit too far.

6 MR. MOSKOWITZ: Judge, I'll only be five minutes and
7 they can have all the time they'd like.

8 THE COURT: Excuse me. Thank you, counsel.

9 Mr. Moskowitz, I'm trying to make sure that I
10 understand the frame of reference in which I'm viewing your
11 evidence. If your point is going to be I want to depose
12 Mr. Cuban earlier rather than later, is that why I'm looking at
13 this? I just want to make sure I understand the point of
14 reference.

15 MR. MOSKOWITZ: Absolutely, your Honor, because we
16 need to depose him before their motion to dismiss for lack of
17 jurisdiction is decided because they are relying strongly and
18 mainly on his sworn allegations.

19 THE COURT: OK.

20 MR. MOSKOWITZ: We said to them, why don't you just
21 withdraw your declaration if you don't want to make him
22 available now, but they said no, we want it both ways. We are
23 going to rely on his declaration, which we think is false --

24 THE COURT: OK.

25 MR. MOSKOWITZ: -- and we are going to have a hearing

1 on the motion to dismiss before we ever allow you to depose
2 Mr. Cuban.

3 So I said to them, why don't you just withdraw his
4 declaration because Judge Altonaga already ruled. Of course,
5 we are allowed to depose the people that you are relying upon
6 for your motion to dismiss.

7 THE COURT: OK. I understand the frame of reference.
8 You can proceed.

9 MR. MOSKOWITZ: OK. Joey, can you play this brief
10 one. This will just give you a background on him and Mr.
11 Ehrlich.

12 (Audiotape played: *It's different. You know, what*
13 *FTX did with the Heat was great and they also had -- they're*
14 *also trying to push their retail software application, but at*
15 *the same time I think we're trying to make this driven more*
16 *towards education and enabling more and exposing more people in*
17 *an educated manner to crypto through Voyager).*

18 MR. MOSKOWITZ: What I am going to do -- Joey, you can
19 skip through all the other clips because they are all in
20 evidence, Judge Reid.

21 What we are showing you is Mark Cuban last year held a
22 news conference where he said: We're trying to target all
23 Maverick fans around the country. I believe the Voyager crypto
24 is safe. I've checked it out. I have an account, and I want
25 all Mav fans from around the country to participate.

1 So how that could not be enough to at least wage
2 allegations that there is jurisdiction over Mark Cuban is just
3 baffling to us. It is more than what we have ever seen.

4 Next slide, Joey.

5 So the court, as your Honor said, Judge Altman had a
6 hearing and he said: Motions to stay are not favored, so I'm
7 going to deny it. He said: Defendants have done nothing to
8 establish a specific showing of prejudice or burdensome, and he
9 said, in fact, taking a preliminary peek at the merits, the
10 motion is not clearly meritorious.

11 Next slide, Joey.

12 So you have to now remember, Mark Cuban and Steve
13 Ehrlich, who is the CEO of Voyager, are going back and forth
14 hugging each other in the end of 2021, saying, Mark is a
15 tremendous advisor to me, we have a great relationship, and
16 this is all important because we need to take his deposition on
17 the jurisdictional parts.

18 Joey.

19 So two months after this conference where these two
20 guys are arm in arm telling the country that they are going to
21 make this brand new type of partnership, that's never been seen
22 before, and he's comparing it to FTX. He says: We're going to
23 work together on educational programs, we're going to go
24 provide materials to people around the country. Two months
25 later, what does he do?

1 Joey.

2 He is the keynote speaker in the Miami Crypto
3 International Convention.

4 So we say to ourselves, as an officer of the court
5 you've just signed an affidavit saying in 2022, I, Mark Cuban,
6 have never been in Florida discussing Voyager ever. What they
7 don't disclose is he was the keynote speaker at the crypto
8 convention just two months after announcing this world-famous
9 partnership with Voyager. And who else is at this conference?
10 Steve Ehrlich from Voyager.

11 So these are all points that you will never find in
12 any case which says, of course, you need to depose him. A, it
13 shows that his affidavit may be false, but secondly, how could
14 that not be contested of whether he is saying is true or not.

15 You have got here a Crypto International Convention
16 that he did not disclose in his affidavit. All they are going
17 to say is, well, good luck, you found it. Well, why did we
18 have to find it? As an officer of a court, don't you need to
19 say, well, he wasn't in Florida. But he actually was as the
20 keynote speaker, the main speaker. So was Steve Ehrlich at
21 Voyager. These are facts you need to share as officers of the
22 court.

23 Next slide, Joey.

24 This was promoted all around the world. It said:
25 Mark Cuban, the billionaire crypto currency guy, is coming to

1 Miami. He is going to discuss his 18 Blockchain companies, and
2 he is going to discuss everything he knows.

3 So I don't know -- how do we react when an officer of
4 the court files an affidavit saying I've never spoken in Miami
5 about these issues? We don't know what to do. We don't want
6 to move for sanctions because we have great respect for our
7 counsel, but after a year this is pretty much pushing the
8 envelope.

9 Joey, next slide.

10 So Mark Cuban is here in Miami. Remember, they said
11 he's never come to Miami and discussed it. We found this clip.
12 This wasn't a clip that they provided. He is sitting in a cafe
13 in Miami, Mark Cuban, in 2022, when he said, under oath, he's
14 never discussed these issues.

15 Joey, let's hear what he had to say.

16 (Audiotape played: *Miami crowd is completely*
17 *different. I never heard hooting and hollering and screaming*
18 *and yelling, and, you know, it was like a party out there*
19 *talking about NFT. So it's a completely different environment,*
20 *and the mayor deserves a lot of credit).*

21 MR. MOSKOWITZ: So I mean, really? I mean, you're
22 saying in an affidavit in 2022 I never discussed any of these
23 issues because I want the case dismissed for lack of personal
24 jurisdiction and as an officer of a court you say that, when we
25 find on our own, after weeks of private investigators, of

1 video, where he is in Miami saying Miami's got the greatest
2 crowd and it's going to be the hotbed of crypto.

3 Mark Cuban doesn't stop there. Judge, every week he
4 is making comments now in the newspaper. He said just three
5 weeks ago to the public media -- this was covered in every
6 newspaper -- first, you gotta understand crypto. There's
7 speculation. That's all the noise. Then there's the things
8 that happened with Voyager and with FTX now. That's somebody
9 running a company that's just dumb as -- I don't want to say --
10 F' greedy.

11 We shouldn't be able to depose this guy? And he is
12 now saying that Steve Ehrlich, who was his best friend and his
13 mentor, is dumb as F'ing greedy. It is just preposterous. He
14 is not staying silent in the media.

15 Next slide, Joey.

16 THE COURT: So, Mr. Moskowitz, as I understand the
17 dispute, the question is when, right. I don't think your
18 opponents are saying, well, you can't depose Mr. Cuban, or are
19 they?

20 MR. MOSKOWITZ: Right. Well, they're saying we can
21 get you him maybe -- the last we had -- Judge, this is the
22 frustrating part. We have had nine meet and confers. The last
23 part was, we think we can get him to you in March.

24 So my point was, well, then you're going to withdraw
25 his affidavit, right? I mean, how could you tell Judge Altman

1 to dismiss this case based on what we think may be lies from
2 Mr. Cuban and we don't get to test his declaration?

3 So we said, just make it easy. Withdraw his
4 declaration and make him available in February, or you're going
5 to rely on his declaration, you decided to use him, you would
6 have to say, hey, if I'm giving a declaration of somebody, I
7 have got to put them up for deposition. That's what Judge
8 Altonaga ruled in this exact same case.

9 So my only request is let's take his deposition now or
10 agree you're not going to rely on his declaration and let's
11 take it in February or March. So that's that point.

12 The three items that we have today, your Honor, is
13 simply entry of a confidentiality order, the deposition, and
14 they have objected to every single discovery request. We made
15 it funny. We only did like three or four requests for
16 production, three interrogatories, two requests for admission.
17 Just give us everything between you and Voyager. That's all we
18 want. It is that simple.

19 The confidentiality order, I sent them a copy of the
20 one Judge Altonaga entered in Voyager four months ago. I knew
21 this was going to be a delay because this was -- all we do is
22 class action litigation, and the defendants always say let's
23 spend a couple of months drafting a confidentiality order.

24 So four months ago I sent them the draft
25 confidentiality order. Only last week they said, you know

1 what, we are going to need a super-secret confidentiality order
2 which has two layers. One that we think is confidential and
3 one we think is super confidential that you can't show your
4 clients, you can't show your experts without telling us, and,
5 Judge Jonathan Goodman, as we cite in our papers, that we will
6 get to, says that's absurd, I would never approve it.

7 Here, Judge Altman already denied their request for a
8 protective order, that we have said, but then in the Procats
9 case in this court he said: Defendants' highly confidential
10 designation, this court says, is the most restrictive possible
11 protective order, confines dissemination of discovery materials
12 only to opposing parties' attorneys.

13 So Judge Goodman said that's ridiculous, and we have
14 had this type of confidentiality order and it was a nightmare.
15 You can't give it to your clients. Why is that? He said,
16 Judge Goodman: It requires defendants to describe the alleged
17 harm it will suffer with a specific demonstration of fact.

18 They haven't done that here. He said there's simply
19 no basis for a highly confidential because the risk of harm to
20 plaintiffs from indiscriminate use poses significant handicaps
21 on the restricted litigant. Discovery can't be shared with any
22 of their clients.

23 I have to tell them if I am going to share it with a
24 witness and then I have to get that witness to sign an
25 affidavit. It is just ridiculous.

1 The last thing I want to do, your Honor, is fight over
2 confidentiality orders. Of course. But the one that was
3 entered in Voyager gives them full protection. Anything they
4 think is confidential they can designate, and I can come to
5 your Honor and challenge it.

6 So they're saying now we have some responsive
7 documents the last month, but we're not giving you any until
8 you sign a confidentiality agreement, and now they are saying
9 we want to spend the next 60 days, should it be a one tier or
10 two tier, and we want to now do ESI discovery. I said, why do
11 you need to do electronic discovery? This is one of the most
12 basic cases. Give us the documents between the Mavericks and
13 the Voyager deal. We don't want to delay this. But we don't
14 want to wait now 90 more days.

15 Joey, next slide.

16 So we are coming in for a landing. So Mark Cuban says
17 in his affidavit, I have no connection. The complaint says he
18 does. The case law is clear. We get the discovery.

19 Next slide.

20 They have one case in their whole papers where they
21 say that we shouldn't be able to depose him. It is this
22 Magistrate Reinhart case, which is incredible because there,
23 there the plaintiffs failed to say any facts of the
24 forum-related conduct. Not a single one. And the complaint
25 didn't even reference Florida's long arm statute.

1 So you compare that to our case, where we have pages
2 and pages of allegations about Mark Cuban, the Mavericks, and
3 Miami, we have press conferences that take place in Miami, we
4 have video of Mark Cuban in Miami, and Judge Reinhart even
5 said: I'll let you file an amended complaint to cure those
6 deficiencies.

7 So there is no case in the country that says under
8 these facts we wouldn't get to depose Mr. Cuban.

9 Again, I don't know why they had him do the
10 declaration. If they wanted some lower-level person, get a
11 lower-level person.

12 So this was the very reasonable proposal we said to
13 them a few weeks ago -- either you withdraw your declaration
14 and we'll depose him later or we need to extend our deadline,
15 because our opposition to their motion to dismiss is due
16 January 3rd and our deadline to amend the pleadings or add
17 parties is January 24th. So if we're going to add anything
18 based on this discovery, we would like that to be at the
19 January 24th deadline.

20 So we have been willing to negotiate and compromise,
21 but the argument that we're just not making Mr. Cuban available
22 because he's busy, and meanwhile he is going on podcasts every
23 day talking about these cases, but he's busy, I can't go until
24 March, that significantly prejudices us. They decided to give
25 Mark Cuban's affidavit, not us.

1 Next slide, Joey.

2 So now the final point is just on the discovery.

3 Every single discovery request has an objection of vague,
4 ambiguous, overbroad, or redundant. Every single one. So they
5 have produced nothing. They say in their papers that we have
6 produced some discovery. You know what they did? They said
7 Mark Cuban had a Voyager account. That was the sole bit of
8 information from all of our requests in the last three months,
9 and they said we'll give you stuff excluding any account that
10 the defendant may have had with Voyager. How is that possible?

11 So sitting here today after three months we have
12 nothing, not a single document.

13 They have moved to dismiss on personal jurisdiction.
14 We would ask your Honor to enter the reasonable confidentiality
15 order. We would ask your Honor to overrule all of these
16 objections, that are just silly. The ones in the interrogatory
17 say we don't even think you make any sense with your requests,
18 and all we do is we quote Mark Cuban, where he says it's cheap,
19 it's fast, the pricing is really good. He says, it's as close
20 as risk free as you're going to get, your Honor. We say, how
21 did you know that? How did you know that it is as close as
22 risk free when you made that representation to the country?
23 The answer is he didn't, because now he's saying I met Steve
24 Ehrlich one day.

25 So they are sort of in a box. Either he didn't know

1 anything about Voyager when he gave this public press
2 conference or he did know and he's lying.

3 We would ask your Honor very respectfully to enter the
4 confidentiality order that Judge Altonaga entered -- it is
5 entered in 99 percent of the cases -- require them to produce
6 Mr. Cuban for deposition in the next 30 days or withdraw his
7 affidavit. Third, overrule all of these objections, which are
8 just silly and baseless, and allow us to do what we have been
9 doing in Voyager for a year, where we will just get to the
10 bottom of what are the connections between Mr. Cuban and
11 Florida and then let's get to the merits of this.

12 Remember, he said Mark is a tremendous advisor to me,
13 we have a great relationship. They are now claiming in an
14 affidavit Mr. Ehrlich may have been embellishing this. So we
15 don't even know what their relationship is. But we're deposing
16 Mr. Ehrlich January 25th. So he is set. They tried to get
17 that one stopped, but that is not happening. So we are going
18 to find out from him, and we have some other third-party
19 discovery, which we have tried to work with with them. We
20 didn't go forward with them because they have asked us not to.

21 We, being very reasonable, but we represent thousands
22 of investors all around the world and we have been trying for a
23 year.

24 Voyager went bankrupt. So that was stayed for six
25 months. The order was going to come out from Judge Altonaga

1 appointing lead counsel just days before they declared
2 bankruptcy. Now it is time to get on with this case.

3 It is two issues, your Honor. Did Mark Cuban promote
4 an unregistered product, and did he disclose in all of these
5 conventions that he was getting paid millions of dollars for
6 doing it. Nothing else matters. That is what we are going to
7 prove to your Honor. It doesn't matter if people saw the
8 commercials. It is just those two issues.

9 So what they want to do is, they called us yesterday
10 and said, why don't we spend the next few months creating an
11 ESI protocol, why don't we create searchable terms, why don't
12 we get document custodians, why don't we then review all the
13 documents, why don't we do an exchange in two months, and then
14 after those two, three months we'll start depositions. We
15 said, are you kidding me? We have been doing this case for
16 seven months. We sent you discovery three months ago. Your
17 documents are overdue, and Judge Altman denied your motion to
18 stay. What have you been doing for three months?

19 The documents have to be ready. We want them
20 tomorrow. We don't need ESI protocol. Do a search for
21 Mavericks and Voyager. We are trying to be very reasonable,
22 your Honor, but the damages are about \$10 billion. We have got
23 hundreds of thousands of customers around the globe that are
24 waiting for this one case, because that is their only avenue of
25 relief, and we would like to move it along.

1 Thank you so much, your Honor.

2 THE COURT: Thank you, Mr. Moskowitz.

3 MR. MOSKOWITZ: I'm turning it over to Mr. Boies.

4 THE COURT: OK. So I'd like to hear from the defense,
5 the defendants.

6 MR. WISSNER-GROSS: Your Honor, Sigmund Wissner --

7 MR. BEST: This is Steve Best. Actually, David, did
8 you have something to say before we begin?

9 MR. BOIES: No. I think in the interest of time, I
10 think Adam has said it well. I will pass.

11 THE COURT: OK. I appreciate that.

12 MR. BEST: Your Honor, this is Stephen Best. I am
13 going to turn it over to Mr. Wissner-Gross in a second.

14 I want to frame this for an actual logical discussion
15 and correct a number of misstatements that have been made by
16 Mr. Moskowitz.

17 We have -- in fact, in our meet and confer yesterday,
18 which was our only meet and confer on these substantive issues,
19 not nine prior meet and confers. In fact, there were several
20 meet and confers that were scheduled and Mr. Moskowitz didn't
21 show up.

22 In any event, let me address the videos and let me
23 address the rhetoric. What you didn't hear --

24 THE COURT: I am not sure you need to.

25 MR. BEST: All right. Let me frame the issue. We

1 offered up Mr. Cuban and asked for dates in February or March,
2 any range of dates from the plaintiffs.

3 THE COURT: OK.

4 MR. BEST: He wouldn't give them to us.

5 THE COURT: OK. So his argument is that in January
6 3rd he's got to file a response to the motion to dismiss, if I
7 understand correctly. So he wants to be able to get
8 information from Mr. Cuban. That would obviously be a problem.

9 MR. BEST: Right.

10 THE COURT: If what he is saying is true, and I'm
11 seeing the video myself, and Mr. Cuban is saying he never
12 promoted this Voyager in Florida, we have a problem, correct?

13 MR. WISSNER-GROSS: Your Honor, Sigmund Wissner-Gross.
14 Perhaps, Steve -- do you want to make the comments or can I
15 take over?

16 MR. BEST: Go ahead, Sig.

17 MR. WISSNER-GROSS: Your Honor, look, Mr. Moskowitz
18 went for 30 minutes and, frankly, misrepresented the record
19 from beginning to end. So, your Honor, if I could --

20 THE COURT: So I need more information on the record.
21 OK.

22 MR. WISSNER-GROSS: Let me try to just reset the table
23 a little bit. Frankly, it is usual in a conference before a
24 magistrate, we talk about the issues step by step.
25 Mr. Moskowitz went through a long ad hominem. I think we owe

1 it to the court to give a little bit of context to set the
2 record straight.

3 THE COURT: OK.

4 MR. WISSNER-GROSS: So, first of all, his is not the
5 only case. There is a case in the Southern District, just for
6 reference. Secondly, the Cassidy case, there are scant
7 references to Mr. Cuban in that case. That case was filed in
8 the Southern District. It was stayed because of the Voyager
9 bankruptcy.

10 THE COURT: I understand.

11 MR. WISSNER-GROSS: He subsequently filed the case
12 against Mr. Cuban and the Mavs and Mr. Ehrlich, and to cut a
13 deal -- to be able to avoid a stay of our case, he cut a deal
14 with the debtors and the creditors' committee in the Voyager
15 bankruptcy to dismiss Mr. Ehrlich. So he is out of the case.
16 That leaves the Mavericks and Mr. Cuban.

17 All right. Let's just talk a little bit of the basic
18 facts which are necessary to give you context for why
19 Mr. Cuban, who has been named individually, as in any other
20 case where someone moves for lack of personal jurisdiction
21 submits a jurisdictional affidavit limited to the
22 jurisdictional issues.

23 First of all, where did the meetings occur? Well,
24 there was a press conference in Dallas on October 27th in which
25 there was an announcement that the Mavs entered into a

1 sponsorship agreement with Voyager. No dispute. That press
2 conference occurred in Dallas.

3 Mr. Moskowitz claims that there is a specific
4 statement that it would be directed to the people in Florida.
5 That never happened. Mr. Moskowitz just made up that fact. It
6 was a press -- in fact, your Honor, the press conference is
7 referenced in the complaint. There is a link. So you and
8 everybody else can look at the press conference and see for
9 yourself that there is actually nothing that was ever said at
10 that press conference in any way, manner, or form, connected to
11 Florida.

12 That point is made in the, not surprisingly, in
13 Mr. Cuban's jurisdictional affidavit he says that he met Mr.
14 Ehrlich in Dallas, which is correct, and in the Mavs
15 jurisdictional affidavit they make the same point.

16 Now, in addition, he met Mr. Ehrlich a second time in
17 Dallas for a charity event for the Mavs, which he states in his
18 affidavit. Nothing in dispute with respect to that.

19 Now if you step back a moment, Mr. Moskowitz talks
20 about at one point he represents hundreds of people, one point
21 he represents thousands of people. In the complaint he claims
22 that there is \$5 billion of damages, now he is claiming \$10
23 billion of damages.

24 We think a central issue in the case, if it survives a
25 motion to dismiss, is whether there was any damages suffered by

1 any of these plaintiffs. We think there is a material
2 causation issue in the case, both on the front-end and the back
3 end. By front-end I mean the following.

4 The press conference didn't occur until October 27,
5 2021, several years after Voyager began its operations,
6 presumably also during part of the class period that preceded
7 that. What Mr. Moskowitz doesn't tell you, what we found in
8 our investigation, even though we haven't had a chance to
9 depose the plaintiffs yet, is that at least eight of the 12
10 named plaintiffs opened their Voyager account prior to October
11 27, 2021.

12 So what does that mean? That means that there is
13 going to be a material, if not dispositive, issue in terms of
14 reliance and causation for eight of the 12 plaintiffs, and we
15 haven't even deposed them yet. So that takes care of eight of
16 the 12.

17 MR. BEST: And to be clear, your Honor, that is only
18 what our investigation has confirmed at this point. It may be
19 more than eight, but at this point we can represent to the
20 court it is at least eight of the 12.

21 THE COURT: OK.

22 MR. WISSNER-GROSS: So in addition, our investigation
23 has uncovered some things about named plaintiffs.
24 Mr. Moskowitz is shocked. I'm doubly shocked. There are going
25 to be things about some of these named plaintiffs that we are

1 stunned he would have the temerity to include them as named
2 plaintiffs.

3 One thing he didn't mention --

4 THE COURT: I understand, Mr. Wissner-Gross, that
5 there are lots of issues out there that Judge Altman is going
6 to have to recon with. What I am trying to do is make sure
7 that I am dealing with the ones that I need to deal with.

8 MR. WISSNER-GROSS: Let me turn, if I could, to the
9 issue of Miami.

10 THE COURT: OK. Thank you.

11 MR. WISSNER-GROSS: It is a fair point. We filed a
12 jurisdictional affidavit. Notwithstanding what Mr. Moskowitz
13 told you, if you look at the affidavit, paragraph 8 --

14 THE COURT: Which document, by the way, is the
15 affidavit so I can look at it with you?

16 MR. WISSNER-GROSS: Mr. Cuban's affidavit, which is
17 41-2 in the docket.

18 THE COURT: I am going to pull that up.

19 MR. WISSNER-GROSS: If you look at paragraph 8, he
20 does say that he attended conferences in Florida. But let's
21 talk about, if we could, let's -- Steve.

22 MR. BEST: Could I fast track this, because, your
23 Honor, you clearly want kind of some overarching resolution
24 here.

25 Your Honor makes a very good point as to the dilemma

1 that has been framed, albeit opaquely, by Mr. Moskowitz. I
2 think a reasonable resolution here is that we find a way to
3 push the judge's response on the jurisdictional issue, allow
4 some time to schedule depositions not only of Mr. Cuban but of
5 the plaintiffs in this case, because our jurisdictional
6 arguments also include a concern as to a good faith filing of
7 this lawsuit by named plaintiffs who in fact had opened their
8 accounts prior to Mr. Cuban making any statement, and as well
9 what hasn't been told is that our investigation has revealed
10 that as part of what you watched on TV, what wasn't on there
11 was the promotion by the Mavericks to give \$100 of crypto if
12 anybody opens their account.

13 Our investigation reveals that none of the plaintiffs
14 responded to that opportunity, and none of the plaintiffs,
15 named plaintiffs in this case opened their accounts and
16 received \$100 worth of free crypto pursuant to this sponsorship
17 agreement.

18 So I understand everything that you were getting to,
19 your Honor. I just want to make it clear that we are spending
20 an incredible amount of money and cost responding to a lawsuit
21 where we have significant evidence at this point that there is
22 a real question as to causation here from these named
23 plaintiffs.

24 So that brings us to what are we going to do here if
25 we are going to push this off and allow an opportunity from

1 Mr. Moskowitz and Mr. Boies to take the deposition of Mr. Cuban
2 solely on jurisdictional issues. We at the very least,
3 respectfully, insist on deposing these named plaintiffs to
4 address our significant concern as to a good faith filing in
5 this case.

6 THE COURT: OK.

7 MR. WISSNER-GROSS: Your Honor, if I could just --

8 THE COURT: I'm sorry. Go ahead.

9 MR. WISSNER-GROSS: I was going to say, if I could add
10 to that, just to complete the record.

11 The appearance by Mr. Cuban at the conference in
12 January 2022 in Miami, that was videotaped. So in other words,
13 Mr. Moskowitz gives you a clip from his appearance. You can
14 watch it. It is about 45 minutes or so. There is no reference
15 to Voyager at all during the course of the -- he was
16 interviewed at a conference in Miami.

17 Mr. Moskowitz, as part of his investigation before he
18 filed the lawsuit, could have reviewed that clip, which was
19 available for months before the filing of the lawsuit. He
20 could have confirmed for himself that at the conference in
21 Miami Mr. Cuban made no reference to Voyager.

22 MR. BEST: Yes. Mr. Cuban didn't bring up Voyager
23 once at that conference. It is on videotape. Mr. Moskowitz
24 knows that.

25 He was also in Miami and other parts of Florida for

1 the Dallas Mavericks, but he didn't bring up Voyager then as
2 well. Let's be clear.

3 MR. WISSNER-GROSS: So he also gave you a clip of what
4 was a short like 10-, 15-minute chat with Mayor Suarez the same
5 day as he appeared at the conference. There is no reference to
6 Voyager in that clip either.

7 THE COURT: I see.

8 MR. WISSNER-GROSS: He also suggests that with Mr.
9 Ehrlich, that maybe, who appeared at the same conference, and
10 maybe they met, etc. Well, Mr. Cuban appeared a day before.
11 We've actually checked this out. He was on his plane heading
12 back to Dallas the following day when Mr. Ehrlich, who didn't
13 appear on the same day, appeared at the conference.

14 He is welcome to try to confirm with Mr. Ehrlich
15 whether they met in Miami, but the answer is no.

16 THE COURT: OK.

17 MR. WISSNER-GROSS: We recognize that if your Honor is
18 inclined to give the plaintiff some jurisdictional discovery --
19 I mean, normally, your Honor, he has to make a showing in his
20 response to the motion to dismiss to demonstrate entitlement to
21 contest some of the jurisdictional facts to be permitted to
22 take a deposition of Mr. Cuban on issues of jurisdiction. The
23 suggestion that Mr. Cuban should withdraw a pretty *pro forma*,
24 standard declaration in support of dismissal is the, frankly,
25 opposite way the procedure is supposed to work.

1 Mr. Cuban and the Mavs submitted pretty much standard
2 jurisdictional declarations. It is Mr. Moskowitz's burden,
3 under well-established case law, in his opposition to make a
4 showing that he is entitled to jurisdictional discovery of
5 Mr. Cuban and of the Mavs, and he has every right to do that in
6 his response on January 3rd.

7 If your Honor is inclined to alter the schedule,
8 obviously we will live with that, but at the same time, as we
9 have noted, we have serious questions about the plaintiffs,
10 their standing and causation issues.

11 Under the schedule we are supposed to be submitting,
12 under Judge Altman's schedule, expert reports at the end of
13 February. We need to be able to complete our depositions of
14 the plaintiffs well before then, unless there is some
15 adjustment on that.

16 THE COURT: OK.

17 MR. WISSNER-GROSS: Your Honor, I don't have to go
18 further on the jurisdictional issues unless you have some
19 questions.

20 THE COURT: Right. So on the jurisdictional -- let me
21 just also start by saying I have a great deal of respect for
22 both attorneys on both sides, and I expect that in this kind of
23 case both attorneys, all the attorneys are going to give their
24 strongest arguments. It is my job to kind of sort that out and
25 figure out the most just and fair way to proceed under the law.

1 So I am not in any way trying to cut anybody short. I
2 just want to make sure I get to the facts as efficiently as
3 possible and I don't waste anyone's time.

4 MR. MOSKOWITZ: Judge, can I respond just in ten
5 seconds to what they said?

6 THE COURT: I don't think that's necessary really.

7 What I want to do is focus on this. I think both
8 parties understand that there is case law to support and a lot
9 of law to support jurisdictional depositions, and yes, there
10 should be some reason for it. In this case Mr. Moskowitz's
11 reasoning is, well, we have at least instances in which he
12 discussed these types of products in Florida and the business
13 itself generally and his statements are generally directed
14 towards Florida.

15 So the question is, when should that deposition occur.

16 I don't think you're saying, Mr. Wissner-Gross, that
17 you don't want to make your client available for a deposition.
18 The only question is when. Correct?

19 MR. WISSNER-GROSS: That's correct, your Honor. We
20 have offered up -- our client is not available in December nor
21 counsel, and Mr. Moskowitz originally noticed his deposition
22 for January 13th. That's the date counsel --

23 THE COURT: January 13th is not a possibility.

24 Has anyone asked Judge Altman to extend the deadline
25 for responding to the motion to dismiss?

1 MR. WISSNER-GROSS: If I could, I don't think that's
2 happened, but there are also two other substantive grounds for
3 dismissal.

4 Jurisdictional is the first prong. We then have the
5 substantive, and we think compelling, ground that the state law
6 claims that have been asserted fail to state a claim under
7 numerous grounds. We have an alternative third ground that
8 Voyager, which is really at the center of his lawsuit, is a
9 necessary party, it's in bankruptcy, and the case has to be
10 dismissed because you cannot join them.

11 THE COURT: I understand.

12 MR. WISSNER-GROSS: That is it about jurisdiction. If
13 Judge Altman agrees with us that there is a lack of in personam
14 jurisdiction, the case is over, it gets dismissed. Otherwise,
15 he has to reach the other two grounds.

16 THE COURT: But he hasn't stayed discovery and we want
17 to try to deal with the issue that is in front of us right now.

18 So the earliest that Mr. Cuban could be available for
19 discovery, and we are talking about limited discovery with
20 respect to jurisdiction, is when?

21 MR. WISSNER-GROSS: Steve, I believe it's February,
22 correct?

23 MR. BEST: I mean, that is what we offered up to the
24 plaintiffs yesterday, and they did not respond. But yes,
25 February, your Honor.

1 THE COURT: February what? We need to have some
2 dates.

3 MR. BEST: All right. So I asked Mr. Moskowitz
4 yesterday for a range of dates so I could check with Mr. Cuban
5 and he did not respond. So I'm asking for a range of dates.

6 THE COURT: OK.

7 MR. BEST: And I will go back to Mr. Cuban and ask him
8 when he is available within that range.

9 THE COURT: OK. Very good.

10 Mr. Moskowitz, if there is an extension of time to
11 respond to the motion to dismiss and you get that deposition in
12 early February, is that a problem?

13 MR. MOSKOWITZ: No.

14 THE COURT: OK.

15 MR. MOSKOWITZ: No.

16 THE COURT: So let's talk about dates. I think
17 everyone is agreeing that that deposition needs to occur, but
18 we are having a problem with dates.

19 I certainly understand, Mr. Moskowitz, you want that
20 information in time to respond, but at this point perhaps Judge
21 Altman would be willing to give you that extension if there
22 were a definite deposition date on the table.

23 MR. MOSKOWITZ: Yes. I think if we both go, the
24 parties go in a joint request and say we believe -- he was very
25 clear in his order denying the stay. I mean, I know they said

1 there are many grounds. He said, I have looked at all the
2 grounds and I find that there is merit here and I am not
3 staying any discovery.

4 THE COURT: I understand.

5 MR. MOSKOWITZ: I think if we go in with a joint
6 request to extend the time to oppose the motion and/or amend
7 the complaint, because that's two weeks later. Maybe we are
8 going to amend the complaint, and I don't want Steve to have to
9 respond to something that we are filing an amended complaint,
10 so then they do a different response.

11 So if we have a deadline that is to respond to their
12 complaint and/or amend the complaint right after Mr. Cuban's
13 deposition, we are fine. So let's just get a set date in early
14 February for Mr. Cuban's deposition. That's all we've ever
15 asked for.

16 MR. WISSNER-GROSS: Your Honor, one approach that's
17 been taken in another case I am involved in is theoretically
18 you could stay the time to respond to the jurisdictional
19 arguments but respond to the balance of the motion to dismiss
20 and then submit his opposition papers, at least directed to
21 jurisdictional issues, after he's taken the deposition of
22 Mr. Cuban.

23 Judge Altman did set a firm schedule of January 3rd.
24 There was an application to extend the time. Mr. Moskowitz did
25 brief all these issues about wanting to take the depositions

1 prior to the response date, and the judge set a January 3rd
2 date for his opposition and a January 10th date for our reply.
3 He gave Mr. Moskowitz an extra ten pages for his opposition.
4 He gave us an extra five for the reply.

5 THE COURT: So this has already been decided. He is
6 not allowing any further extensions. Is that what I'm hearing?

7 MR. MOSKOWITZ: Your Honor, I don't think so. I mean,
8 I think the only thing Judge Altman was clear on is discovery
9 is not stayed. So all of these documents, which were due last
10 week, all of these documents about Mark Cuban and Voyager,
11 where are they? I mean, we need them immediately. Those
12 aren't stayed.

13 So all of this argument now about, well, if we put
14 Mark Cuban up for deposition in February, let's just forget
15 everything that Judge Altman just ruled? Judge Altman has a
16 two-page order saying I'm not delaying depositions, I'm not
17 delaying document requests, I'm not delaying interrogatories.
18 All of that stuff needs to be immediately produced.

19 MR. WISSNER-GROSS: You know --

20 MR. MOSKOWITZ: Can I finish?

21 MR. WISSNER-GROSS: In all fairness --

22 THE COURT: Excuse me. Sorry. It's impossible for me
23 to deal with two voices going at the same time.

24 Mr. Moskowitz, I'm looking at this order. I see a
25 paperless order. Can you tell me what document you are

1 referring to?

2 MR. MOSKOWITZ: It is a paperless order. No, the one
3 denying the motion to dismiss. I mean denying the motion to
4 stay.

5 THE COURT: Denying the motion to stay I have a
6 paperless order document 45, which simply says that he's taken
7 a preliminary peek at the merits of the motion to dismiss, the
8 one that you referred to.

9 MR. MOSKOWITZ: Right.

10 THE COURT: Am I supposed to look at something else?

11 MR. MOSKOWITZ: No, no, no. That's it.

12 THE COURT: OK.

13 MR. MOSKOWITZ: And all of the discovery that we have
14 served was due three weeks ago and we haven't gotten any of it.

15 THE COURT: You served discovery in September, you're
16 saying.

17 MR. MOSKOWITZ: Yes.

18 THE COURT: OK.

19 MR. MOSKOWITZ: So I don't know why there would be any
20 dispute now that all of that discovery shouldn't be produced
21 tomorrow.

22 THE COURT: OK.

23 MR. MOSKOWITZ: That has nothing to do with the
24 jurisdictional discovery.

25 THE COURT: All right. Thank you. Thank you.

1 MR. MOSKOWITZ: He's saying there are other grounds to
2 dismiss the case.

3 THE COURT: OK. Let me talk to Mr. Wissner-Gross now.
4 Go ahead, sir.

5 MR. WISSNER-GROSS: Yes, your Honor. First of all,
6 thank you. The paperless order speaks for itself. There was
7 nothing in that order about producing things forthwith, etc.
8 That is just not in the order.

9 We have actually asked Mr. Moskowitz for an extension
10 of time to respond to our discovery responses. Didn't get it.
11 We served our discovery responses. It is a little bit odd that
12 he is asking you to rule on discovery issues that aren't before
13 you, including our written responses.

14 But for context, there was a request to admit served
15 on Mr. Cuban. He answered the request. He answered the
16 request. He responded to the request to admit. There was a
17 set of interrogatories served on Mr. Cuban and a separate set
18 served on the Mavs. We actually answered. We provided
19 responses to those.

20 For example, they ask: Tell me, Mr. Cuban, if there
21 are deals that you have or compensation you received. Well,
22 Mr. Moskowitz may not have liked the answer, but Mr. Cuban
23 didn't have an agreement with Voyager and he didn't get
24 compensation from Voyager.

25 They asked the Mavs whether the NBA had some separate

1 deals. The questions were answered.

2 The document requests which were served on Mr. Cuban
3 add the Mavs. There were written responses. As is standard in
4 cases like this, we said we would produce responsive,
5 nonprivileged documents, A, once a protective order was entered
6 and, B, on a reciprocal basis, reciprocal rolling basis, with
7 the production from the plaintiffs.

8 We have served them with discovery requests that are
9 due on December 22nd. We still remain prepared to begin a
10 rolling production on a reciprocal basis once a protective
11 order is entered. What we have suggested in the letter or
12 email submitted to your Honor is since we haven't gotten any
13 search terms from the other side, there is no ESI protocol in
14 place, let's do this --

15 THE COURT: Excuse me. So we're still stuck on
16 setting a date for a deposition of Mr. Cuban and we don't have
17 the date. No one is offering any dates at this point?

18 MR. BEST: So back to where we were, your Honor.

19 THE COURT: Yes.

20 MR. BEST: I asked Mr. Moskowitz for a range of dates.
21 He won't give it.

22 MR. MOSKOWITZ: Judge, this is a game. He's saying
23 give me dates after your response is due. I said, why would I
24 give you voluntarily a date after it's due if I want it before
25 our pleadings are due.

1 THE COURT: Right. I understand. Then so we were
2 talking about, perhaps, an agreed motion for getting an
3 extension on the response.

4 MR. BEST: This is not a game, your Honor. This is
5 not a game.

6 THE COURT: So why don't we just go ahead and come up
7 with some dates.

8 MR. BEST: Yes. Just give me some dates.

9 MR. MOSKOWITZ: February 1st, 2nd, 3rd, 4th, or 5th.

10 MR. BEST: I will talk to Mr. Cuban and we will work
11 within that range.

12 Do you have an alternative range date, Mr. Moskowitz?

13 MR. MOSKOWITZ: 1st, 2nd, 3rd, 4th, 5th, 6th, or 7th.

14 THE COURT: That sounds like alternatives, Mr. Best.

15 MR. BEST: I think that is the weekend, but yes.

16 THE COURT: He is saying as early as possible in
17 February, is what I'm hearing.

18 MR. BEST: So the first half week or the second full
19 week. The first full week or the first half week in February.
20 I will get a date within that range.

21 THE COURT: And now are we talking about depositions
22 limited to the jurisdictional issue at that point. I just want
23 to clarify.

24 MR. WISSNER-GROSS: That's fine with us.

25 THE COURT: OK.

1 MR. MOSKOWITZ: Why would it be limited?

2 THE COURT: Excuse me, Mr. Moskowitz. Excuse me,
3 please.

4 So are we also talking about a joint motion to Judge
5 Altman to make sure that you have that additional time to
6 respond to the motion to dismiss?

7 MR. WISSNER-GROSS: I had suggested, and we are doing
8 this in realtime, your Honor, so Mr. Best can trump me on this
9 or disagree, but I suggested it be limited to the
10 jurisdictional issue rather than pushing back all the rest of
11 the briefing, because the second and third grounds for
12 dismissal have nothing to do with jurisdiction. The discovery
13 will have no bearing on those other alternative grounds.

14 MR. BEST: And if we are going to talk about a joint
15 motion, we have to consider the important discussion about
16 deposing plaintiffs on the causation issue, because that
17 affects our date we're asking the judge to push the
18 jurisdictional discovery piece on.

19 THE COURT: OK. Because all of this is a part of the
20 motion to dismiss.

21 MR. BEST: Yes, your Honor.

22 MR. MOSKOWITZ: The only thing, your Honor --

23 THE COURT: OK. So you want to have a certain amount
24 of discovery done before response is due.

25 MR. BEST: If that is what --

1 THE COURT: Is that what I'm hearing? I just want to
2 be clear.

3 MR. BEST: On the issue of going jointly before Judge
4 Altman, yes, of course.

5 THE COURT: So the defendants and the plaintiffs need
6 some discovery. Plaintiffs need discovery with respect to
7 Mr. Cuban and defendants want discovery of the plaintiffs and
8 their relationship to Voyager.

9 MR. BEST: Yes, your Honor.

10 THE COURT: So there is a lot happening.

11 Mr. Boies.

12 MR. BOIES: The thing that I think it is important not
13 to lose track of here is that Judge Altman ordered that
14 discovery go forward. He set some time limits on us.

15 I frankly don't think it takes 60 days to get a
16 deposition of Mr. Cuban, but if it takes that long and it
17 doesn't prejudice anybody, I think that's fine.

18 I think the thing that is important is that if Judge
19 Altman says no, we are going to stick to this schedule, then we
20 are going to have to take Mr. Cuban within that schedule.

21 THE COURT: Right.

22 MR. BOIES: We can't have a situation in which we put
23 Mr. Cuban outside of whatever schedule Judge Altman is prepared
24 to give us.

25 THE COURT: Has already done. Right.

1 MR. BEST: And we are saying Mr. Boies is absolutely
2 right.

3 THE COURT: Thank you.

4 Thank you, Mr. Boies.

5 So right now the January 3rd is simply the 14 days.
6 It wasn't a court-set deadline.

7 MR. WISSNER-GROSS: No. The response was originally
8 due in December.

9 THE COURT: So it's been extended already.

10 MR. WISSNER-GROSS: They made an application to extend
11 it. The judge extended it to January 3rd and gave us to
12 January 10th for our reply.

13 THE COURT: OK. Can I see that order? Where would
14 that be?

15 MR. BEST: ECF No. 59, Judge.

16 THE COURT: So you already had an extension. I'm
17 sorry. I didn't understand that.

18 Here we go. Paperless order.

19 (Pause)

20 THE COURT: Right. You have spent a lot of time in
21 this case before you got to me. I see. OK. The court has
22 already given you an extension.

23 All right. So now what is really holding all this up
24 is the next problem is your confidentiality order. I see that
25 is in the order as well.

1 MR. BEST: Yes.

2 MR. WISSNER-GROSS: Your Honor, if I could briefly
3 respond on that issue.

4 THE COURT: I'm sorry.

5 MR. WISSNER-GROSS: And I will be very brief.

6 THE COURT: Yes. Go ahead.

7 MR. BEST: So we received from Mr. Moskowitz the
8 Cassidy protective order, which was not ours.

9 THE COURT: I saw that.

10 MR. BEST: We reviewed it. We used it as a template.
11 We frankly made modest changes to add principally a second
12 level confidentiality for highly confidential documents that
13 would cover personal financial information, for example, of
14 Mr. Cuban or extremely sensitive competitive information of the
15 Mavericks.

16 The proposed changes we made preserved the ability of
17 Mr. Moskowitz or us, to the extent we object to a highly
18 confidential designation, to go to the court, and now to go to
19 your Honor, to challenge any designation.

20 I have done lots of cases on the plaintiff's side. I
21 have never resisted a defendant's effort to have the two-level
22 classification.

23 What is a bit ironic here is that Mr. Moskowitz's
24 clients were sued in the Voyager bankruptcy when Voyager sought
25 to stay this case and Mr. Moskowitz agreed to a protective

1 order in that case that had the same two levels, two tiers of
2 confidentiality, confidential and highly confidential.

3 In our meet and confer yesterday we had hoped that at
4 least on this issue Mr. Moskowitz would agree to our request
5 or, alternatively, give us specific comments.

6 The one comment that I think he had, which I am going
7 to go out on a limb and throw him a bone or concede on one
8 point to see if we can get to a resolution on this, is he
9 yesterday objected to language we inserted requiring that we as
10 defense counsel have a chance to see who is signing the joinder
11 when an expert or third-party has to sign the joinder to agree
12 to be bound by the confidentiality. I'm prepared to forego
13 that. So if whoever he shows it to, as long as they sign the
14 joinder that they will agree to the terms, that that will be
15 sufficient. I think that was a main concern he had.

16 Beyond that, this is standard, and we could show your
17 Honor tons of cases from this district where courts routinely
18 approve the two-tier approach --

19 THE COURT: I have routinely approved it myself.

20 MR. WISSNER-GROSS: It is not my practice to just
21 rotely designate everything as highly confidential. That is
22 not the way I practice.

23 So we haven't had a chance to submit our proposed form
24 to your Honor. I know Mr. Moskowitz gave you a redlined
25 version. It is probably impossible to figure out what is

1 redlined and what isn't. We are prepared to submit that to
2 you. We think it is extremely reasonable and standard.

3 THE COURT: OK. I saw a redlined one that was
4 attached to a motion that was eventually denied by the court,
5 because obviously he wanted me to handle that and he did not
6 have the evidence for why a protective order was needed. He
7 didn't ask for that.

8 The redlined one that is in the court record, is that
9 different from what you are proposing?

10 MR. WISSNER-GROSS: That is our redline.

11 THE COURT: Right.

12 MR. WISSNER-GROSS: By the way, Mr. Moskowitz just, to
13 clarify the record, I think he suggested in his statement that
14 a few days ago we gave you a protective order. We actually
15 gave it to him before Thanksgiving.

16 THE COURT: OK.

17 MR. WISSNER-GROSS: Our version.

18 If it would be convenient for the court, we could,
19 right after this conference, we could submit to your Honor a
20 clean version of our order.

21 THE COURT: OK.

22 MR. WISSNER-GROSS: Again, the only changes really
23 were to add a highly confidential designation and some other
24 tweaks. Other than that we used the Cassidy form as a
25 template.

1 THE COURT: Right. I mean, I will be honest,
2 Mr. Moskowitz --

3 MR. BEST: Which plaintiff agreed to.

4 THE COURT: -- I looked at the redlined and the
5 Cassidy. I found the redlined with the two levels to be
6 actually clearer in its description of what confidential and
7 highly confidential are.

8 While I appreciate your concern regarding the
9 over-designation issue, that is one that can be addressed by
10 Rule 37. That would be an abuse if the vast majority of the
11 documents suddenly turned up as highly confidential. So I
12 appreciate the concern, but I have often signed these
13 two-tiered confidentiality documents.

14 Tell me why, other than your concern for the overuse
15 that you have in this case, as to why I shouldn't sign it.

16 MR. MOSKOWITZ: Your Honor, the last thing I ever want
17 to fight is confidentiality orders. It is the last thing that
18 we ever want to fight. I don't want to fight it.

19 He is right that we did try it in other cases and we
20 found it to be incredibly harmful. Why? It says you cannot
21 share these documents with your clients.

22 So at the end of the day when we have class
23 representatives and clients who decide whether they think a
24 settlement is reasonable or not, we are not allowed to show
25 them any of these documents, and there's a lot.

1 You're right, a lot of times people over-designate,
2 but we can't show them any of those documents. That is why the
3 only reported decisions I'm aware of, and I just practice class
4 action in the Southern District of Florida, they have not, when
5 they were questioned, they have not accepted these double
6 secret ones, especially Judge Jonathan Goodman who went on for
7 a few pages as to why.

8 Your clients can't see any of the documents, and what
9 is the justification for that? If the client agrees to the
10 confidentiality order, why wouldn't you tell your own client
11 the basis of these claims.

12 So I don't think --

13 THE COURT: There have been many cases where Judge
14 Goodman has accepted them.

15 What I think is a concern here is that the Cassidy
16 case, the Cassidy agreement does not contain enough detail as
17 to what would be highly confidential. For instance, the highly
18 confidential document that I saw marked, you said, well, bank
19 statements that have the account number, other financial
20 accounting statements that have financial information, Social
21 Security numbers, those are, and I think you would have no --
22 you would not contest that that would be highly confidential.

23 MR. MOSKOWITZ: I think we are getting to a
24 resolution --

25 THE COURT: But I do think that it is often that the

1 entire document might be claimed as highly confidential when
2 you can simply redact out the financial information.

3 So what I would say is, and I'd like to take a look at
4 the documents that you propose, Mr. Moskowitz, and if it is
5 simply the Cassidy agreement as it is, I have that, and the
6 document that you propose, Mr. Wissner-Gross, if you'd like to
7 send me your proposed protective order, I will certainly make a
8 ruling on that.

9 I would add to it that the concerns about
10 over-designation could be remedied by objections to me, that
11 you wouldn't have to write the objection, Mr. Moskowitz. You
12 can simply contact my chambers and we can have an informal
13 hearing, as we are having now, and that we can also attach
14 sanctions, which are already provided for by Rule 37, in that
15 case of over-designation.

16 We just need that document to be agreed upon so this
17 case can move on. I have a feeling that that is what is
18 holding things up more than anything else.

19 MR. MOSKOWITZ: Well, your Honor, I'm very happy with
20 counsel's agreement that I don't have to tell him, hey, I'm
21 going to show this document to this non-testifying expert so
22 that I have to identify all of the experts that we have in our
23 case. You understand that. I mean, that is absurd.

24 So he is saying, Adam, you don't have to tell me who
25 the person is that you're sharing these documents with. That's

1 important.

2 THE COURT: OK.

3 MR. MOSKOWITZ: So that goes a far way. As long as we
4 don't have to do that, the only real question is, why can't we
5 share it with our clients if our clients are bound by the
6 confidentiality agreement. I don't know the answer to that, of
7 why --

8 MR. BEST: It starts with your clients being felons.

9 THE COURT: I don't know that we want to go there,
10 Mr. Best. I have no information on that.

11 MR. BEST: That is part of the investigation, and that
12 is part of our concern --

13 MR. MOSKOWITZ: I don't think that's where we need to
14 go.

15 MR. BEST: And this is --

16 THE COURT: Excuse me, Mr. Best. This discussion is
17 not helpful to the court.

18 All right. So what is helpful is this. If you need
19 to discuss something with your client, Mr. Moskowitz, you still
20 don't need to give them the bank account number, the financial
21 information, the intricacies of everything that Mr. Cuban has
22 invested in. This is not part of a discussion that needs to be
23 had in order to determine whether a settlement is fair or not
24 fair.

25 I know you have the experience to do this. I know you

1 do. I trust you.

2 MR. MOSKOWITZ: We can get it done. We will get it
3 done, your Honor. If he sends me a request that is what he is
4 representing today, I promise you that we can get it done this
5 week so we can get the documents. We will agree to it.

6 THE COURT: OK. So then I don't have to issue an
7 order. You will agree to the highly confidential, the two tier
8 with the caveat that was just discussed.

9 MR. MOSKOWITZ: As long as I don't have to tell him
10 who my experts are and, as your Honor very respectfully said,
11 we can raise at any time we want, we can show you any abuse
12 that we believe. Let's just get this done so we get the
13 documents.

14 THE COURT: Mr. Wissner-Gross.

15 MR. WISSNER-GROSS: That's fine, your Honor.

16 THE COURT: Very good.

17 MR. WISSNER-GROSS: We'll submit to you right after
18 the conference a copy of our clean version so you can compare
19 them. I think you're seeing that, other than the highly
20 confidential designation, it is minor tweaks. Maybe what we
21 will do is we will indicate also, there is one sentence for a
22 request that we get a chance to see who is signing the joinder,
23 we'll delete that --

24 THE COURT: Delete that.

25 MR. WISSNER-GROSS: -- version that we submit to your

1 Honor or maybe submit that redline to you with just that line
2 deleted so you can see our clean version of that highlighting
3 which we're prepared to delete.

4 THE COURT: OK. So you will submit that.

5 Once I have that, Mr. Moskowitz, that is the document
6 that I am going to go ahead and sign?

7 MR. MOSKOWITZ: Sure.

8 THE COURT: OK.

9 MR. MOSKOWITZ: That's OK with us, your Honor.

10 THE COURT: Very good. We got one issue resolved, and
11 I'm very happy about that, I have to tell you.

12 MR. WISSNER-GROSS: Your Honor, you're on a roll.
13 You're on a roll.

14 THE COURT: I think it is an important roll because it
15 starts discovery. We can agree now that documents need to be
16 produced.

17 Now, we still have to determine what to do about
18 Mr. Cuban's deposition and you still need to resolve your
19 objections to the discovery.

20 MR. WISSNER-GROSS: Your Honor, we also have, if we go
21 chronologically according to the letter that we submitted
22 yesterday, or email, we had proposed, which, again, is standard
23 in cases like this, that the parties have agreed upon search
24 terms and a draft ESI protocol. I appreciate that
25 Mr. Moskowitz wants to skip all that, but I just haven't done

1 any case, let alone a case like this, in years where we don't
2 have search terms.

3 All the documents are electronically based. The Mavs
4 is actually a big organization. Same for Mr. Cuban, in terms
5 of doing searches for his emails, etc.

6 We asked Mr. Moskowitz yesterday to work with us to
7 give us proposed search terms and work with us on an ESI
8 protocol. We didn't get cooperation yesterday.

9 THE COURT: Did you suggest any search terms and ESI
10 protocol? Did you suggest?

11 MR. WISSNER-GROSS: We are happy to have that
12 discussion. Usually a plaintiff comes to the defendant and
13 says, here are the search terms we'd like, we look at it, we
14 see the number of hits.

15 I will confess that for Mr. Best and I it is simply
16 the assertions are more facile on this. What usually happens
17 is that it triggers a huge number of hits and then there is
18 some effort to narrow. I know that there's been some effort by
19 our associates to get a sense of the universe.

20 MR. BEST: Hey, Sig, let me cut this short to your
21 Honor.

22 To be clear, we asked counsel last night, opposing
23 counsel last night, for their search terms or any assistance,
24 and they refused or declined to give it and said just give us
25 the discovery. So they won't give us any search terms.

1 THE COURT: OK. So this makes life easy for you.

2 MR. BEST: Yes.

3 THE COURT: You come up with your search terms, your
4 ESI protocol. You tell them what it is going to be.

5 MR. BEST: Done.

6 THE COURT: You will produce your discovery based on
7 reasonable search terms framed by their request.

8 MR. BEST: Yes. I say that just to let your Honor
9 know we have not been obstructionist here.

10 THE COURT: OK.

11 MR. BEST: We have been asking them for their search
12 terms and they have declined to give them. So, your Honor, we
13 absolutely accept your Honor's position on this.

14 THE COURT: What else can we do.

15 So at this point there is some outstanding discovery
16 from the defendants. Defendants served plaintiffs with
17 document requests. Responses are due December 22nd.

18 What about what defendant owes the plaintiff?

19 MR. MOSKOWITZ: We have document requests that are
20 outstanding that Judge Altman said there is no stay.

21 THE COURT: Right.

22 MR. MOSKOWITZ: We haven't gotten them.

23 They are saying once they sign this confidentiality
24 order they are all going to be produced.

25 MR. WISSNER-GROSS: I think the judge is asking about

1 your production to us.

2 THE COURT: I will start with plaintiffs' production
3 and then we will go to defendants' production.

4 MR. MOSKOWITZ: Sure.

5 THE COURT: It seems like there is some outstanding on
6 both sides.

7 MR. MOSKOWITZ: I never got a chance to respond to the
8 20-minute speech that Stephen said about the plaintiffs and how
9 they're felons. So let me kind of get into this.

10 THE COURT: I don't know that I want to hear about
11 that either.

12 MR. MOSKOWITZ: No, no, just discovery. Just
13 discovery.

14 They filed a motion to dismiss, your Honor. Nothing
15 in that motion to dismiss raises any of these allegations.
16 They went forward with Judge Altman with a motion to dismiss
17 that they want heard. It doesn't say they need to take a
18 single deposition of any of the plaintiffs.

19 For three months, three months, there is not a single
20 email from Stephen that ever says we'd like to take any of your
21 depositions. It only started last week when the judge that
22 denied their motion to stay, then they said, we have to go on
23 the offense. So for three months --

24 THE COURT: I understand that they need to do some
25 depositions. Let's talk about the document requests and the

1 responses due from your clients.

2 MR. MOSKOWITZ: Right. We have it due next week, I
3 think our objections, and we are planning on --

4 MR. WISSNER-GROSS: On the 22nd.

5 MR. MOSKOWITZ: We are, of course, going to comply and
6 provide our responses on time, and that is exactly what we've
7 told them.

8 THE COURT: So when are your responses due?

9 MR. WISSNER-GROSS: Thursday.

10 MR. BEST: Thursday.

11 THE COURT: Thursday, the 22nd. Because today is the
12 20th. I just want to be clear, Mr. Moskowitz.

13 MR. MOSKOWITZ: Yes.

14 THE COURT: Is it Thursday?

15 MR. MOSKOWITZ: Yes, and we're prepared to provide our
16 responses on time.

17 THE COURT: OK. All right. Very good. So now --

18 MR. MOSKOWITZ: We are happy to meet and confer and
19 talk about them, like we did over the last three months, and
20 we'll try to work everything out.

21 THE COURT: Very good.

22 Then defendants, what about what you need to produce?
23 I think you said you responded to some admissions but there are
24 some requests for production outstanding.

25 MR. WISSNER-GROSS: I think the only thing that would

1 really be at issue would be the document requests. We
2 responded to the requests to admit and to the interrogatories.

3 Again, we proposed that we do this on a rolling basis.
4 Obviously once we have the protective order in place, ESI in
5 place, then we will do it on a rolling basis along with the
6 plaintiffs' production to us.

7 We had proposed starting in mid-January, your Honor,
8 frankly to get the ESI protocol in place and the search terms.
9 We still think that that makes sense. That is not going to
10 hold up any other issue in the case. That would be our
11 proposal, that we get the procedure, protective order, ESI
12 search terms in place and that we begin the rolling production
13 by both sides on the 13th of January.

14 MR. BEST: With the caveat that we accelerate any
15 jurisdictional discovery, document discovery.

16 THE COURT: That's the problem you have, right.

17 MR. BEST: Yes.

18 THE COURT: So you've got an order saying you've
19 already got an extension to January 3rd. What are you going to
20 do about that?

21 MR. WISSNER-GROSS: We will work with the other side
22 to accelerate the jurisdictional discovery, the document
23 discovery. Frankly, I don't think there is much, your Honor,
24 in terms of contacts, relevant contacts in Florida

25 Ironically, the tape of Mr. Cuban's interviews are

1 already in the possession of the plaintiffs.

2 MR. BEST: I am going to cut Mr. Wissner-Gross off.
3 We will make the January 3rd deadline for jurisdictional
4 document discovery.

5 THE COURT: Thank you. That works.

6 MR. MOSKOWITZ: Your Honor, if I can just mention,
7 Judge Altman denied their stay of all discovery. He did not
8 limit this to jurisdictional discovery, and we have now been
9 waiting for three months. The discovery is outstanding. Judge
10 Altman denied their motion to stay. They wrote in their
11 objections we have documents to produce to you once a
12 confidentiality order is entered. Why can't they produce it
13 next week?

14 What they're trying to say is we want to wait 60 days,
15 agree on ESI protocols, agree upon your documents, and then
16 we're going to play a game with you, tit for tat. When you
17 produce yours, we'll produce ours.

18 THE COURT: Well, that is not what I am hearing. So
19 what I am hearing is that we are going to get the
20 confidentiality order tomorrow, right. By tomorrow it will be
21 signed, and that they want to start -- they will produce
22 anything that is jurisdictional. I'm not clear on exactly what
23 that means, but before January 3rd, but that the rest of it
24 you're going to be producing it January 13th.

25 Did I understand that correctly, Mr. Best?

1 MR. BEST: So we are going to make best efforts to --
2 is January 13th the drop-dead date? Is that what the order
3 says?

4 THE COURT: Which order?

5 MR. BEST: For full discovery. I don't know where
6 January 13th came from.

7 MR. WISSNER-GROSS: January 13th is not in any order.

8 THE COURT: No, it is just what I thought I heard him
9 say.

10 MR. WISSNER-GROSS: I have a feel for the process,
11 that our associates can go through.

12 I think, your Honor, if this could be done as a
13 rolling production -- I don't want to be locked in on a gotcha
14 game that there is a substantial production on the 13th but not
15 everything. I think a rolling production is standard. If the
16 date begins on January 13th, we will live with that.

17 We had proposed a deadline for the completion of
18 document discovery of March 13th. We're happy to move that up.
19 I think it is going to have to be a rolling production given
20 what I understand the process on the defendants' side to pull,
21 identify, etc., the documents.

22 MR. MOSKOWITZ: Your Honor, we would disagree. We
23 have been abused in these rolling processes that take three or
24 four months.

25 December 20th is today. Their motion to stay was

1 denied two weeks ago. The documents are outstanding. They had
2 three months to look for them. Why can't we have them all by
3 January 3rd? I don't know -- what have they been doing for
4 three months. Their stay was denied.

5 THE COURT: I don't know what they were doing.

6 Let's start with today. What I see both parties were
7 doing was not coming together to get a protective order in
8 place, and that is generally how it's done. I mean, we start
9 with the protective order. So let's get that in place and
10 let's move on from there. I think that sounds like what we
11 have to do at this point.

12 January 13th is the date for rolling production to
13 commence.

14 Tell me, Mr. Wissner-Gross, Mr. Best, how quickly can
15 you produce the documents so that we are not talking about
16 extending that out for 60 days from there? We are talking
17 about starting on the 13th, but you wanted to give yourselves
18 some wiggle room so that you could review these documents to
19 make sure there is nothing attorney-client privileged or
20 otherwise.

21 MR. BEST: That is the problem. There is a ton of
22 attorney-client privileged communications surrounding legal
23 counsel from the Mavericks discussing the sponsorship
24 agreement. In fact, the privilege review is going to be much
25 more onerous than a normal document production here, and that

1 will delay the process.

2 If we can prioritize the nonprivileged review, and I
3 think Mr. Moskowitz and Mr. Wissner-Gross spoke about canceling
4 or at least postponing the general counsel of the Mavericks
5 deposition for a while, and we can focus on nonprivileged
6 production, that will speed up the process.

7 THE COURT: I see. So, Mr. Moskowitz -- so, Mr. Best,
8 you're saying the reason you're trying to get the
9 jurisdictional things out by January 3rd and then the rest of
10 the documents later is because it is going to make the process
11 a little more efficient for you.

12 MR. BEST: Yes, your Honor.

13 THE COURT: OK. So that sounds very reasonable to me.
14 I just don't know exactly what jurisdictional production means.

15 MR. BEST: So --

16 THE COURT: What do you mean by that?

17 MR. BEST: -- I suspect -- I am going to guess what
18 Mr. Moskowitz wants, because he wouldn't tell us what he
19 wanted. I am going to guess it is evidence of Mr. Cuban's
20 visits to Florida, emails and/or participation in the crypto
21 conference in Florida, as well as any other touchings in
22 Florida that have to do with the Voyager and/or crypto
23 conference discussions. Past that, I would be guessing my way
24 through this, and that is why I don't think it will be much
25 because we know that he didn't meet with Mr. Ehrlich in Miami

1 at the crypto conference.

2 So we will give him jurisdictional discovery on these
3 points by January 3rd. Whatever exists he will have.

4 THE COURT: OK.

5 MR. BEST: I don't think it is much.

6 THE COURT: I think I understand what you are saying.
7 All right. So let's start with getting that protective order
8 done. You can get that to me as soon as possible,
9 Mr. Wissner-Gross, so I can sign it by tomorrow.

10 MR. WISSNER-GROSS: We will get it to you right after
11 the conference. We are going to make that one tweak I promised
12 you.

13 THE COURT: If you could get it to me today would be
14 even better. That would be fantastic.

15 Then we are agreeing to jurisdictional evidence by
16 January 3rd, as just described, and the production of documents
17 from defendants to the plaintiffs January 13th and from
18 plaintiffs to defendants December 22nd.

19 MR. BEST: The only thing left on your calendar is
20 taking up the depositions of the plaintiffs. I will let you
21 run your course before we get to our points because we have
22 been handling Mr. Moskowitz's points. In the framework of the
23 calendar, I just want to put that particular letter for
24 discussion.

25 THE COURT: OK. Can we pause for just about five

1 minutes?

2 MR. BEST: Of course.

3 THE COURT: Then we will be back. OK.

4 MR. BEST: Yes.

5 THE COURT: Let me go off the record for just a few
6 minutes.

7 (Recess)

8 THE COURT: So the motion to dismiss has a number of
9 claims.

10 MR. MOSKOWITZ: So, Sig, just so I understand about
11 the protective order, is there any other reference in the
12 document that says about us having to tell you which are the
13 experts, or just one sentence?

14 MR. WISSNER-GROSS: I think, Adam, it's only the
15 second sentence in paragraph 8. I'm having my associate red
16 line it so we can file it. We will red line that sentence out.
17 Actually, I thought it was a fair -- I thought it was a fair
18 point you made on that issue.

19 MR. MOSKOWITZ: And I don't mind not sharing with my
20 client how much Mark Cuban makes. If we need to, we will go to
21 the court and say this person will not settle. Good
22 cooperation.

23 MR. WISSNER-GROSS: You and I, we are in different
24 universes. The judge is trying to get us onto the same planet.

25 MR. MOSKOWITZ: We're getting there.

1 THE COURT: We are getting there.

2 So far we have been able to get the protective order
3 in place, which is good, and we have talked about the
4 outstanding request for discovery. So that's good. Now we are
5 talking about getting Mr. Cuban's deposition in the first week
6 or so of February.

7 The next topic, Mr. Wissner-Gross has brought up is
8 depositions of the plaintiffs. Of course, it is a lawsuit and
9 you will want to depose the plaintiffs, but let me ask you
10 this. Is that in connection with this motion to dismiss or
11 simply just your normal discovery of the plaintiffs?

12 MR. WISSNER-GROSS: I think it's twofold. Mr. Best
13 identified in connection with the motion to dismiss, obviously
14 we have all but three of the plaintiffs are non-Florida
15 residents. So part of the argument we have advanced is the
16 lack of connection to Florida.

17 Again, it is not before you but for Judge Altman. We
18 have advanced an argument under several case law, if you are
19 not in a diversity case, if you are not a Florida plaintiff,
20 you have a problem being able to establish jurisdiction against
21 a nonresident of Florida under these set of claims.

22 Beyond that there is a second issue, and this is a
23 good segue to it. Under the judge's schedule all the expert
24 reports are due on February 23rd. We had proposed to
25 Mr. Moskowitz, and it is outlined in the letter from Knight, or

1 emailed to you, that we pushed back the expert reports, the
2 opening reports to May 12th, the rebuttal to June 2nd. I think
3 the judge in his order contemplated that you could make those
4 adjustments or the parties could stipulate that as long as it
5 doesn't affect the overall deadlines.

6 The reason why that is important to us is that, as we
7 outlined at the beginning of this hearing, we think there are
8 incredibly significant causation issues, damages issues, lack
9 of damages.

10 Our experts, for them to be able to do their job, they
11 obviously have to have us have the benefit of taking the
12 deposition of the plaintiffs. We think none of them sustained
13 any damages. There are going to be issues not only of when
14 they opened an account -- at least eight opened it before the
15 press conference -- there are going to be decisions they made
16 about trades within the account. We don't think, and our
17 experts are going to address this, there are any damages or
18 material causation issues.

19 For them to do that, obviously, we have to depose the
20 plaintiffs reasonably in advance of the opening reports being
21 due February 23rd. We'd have to depose them all by the end of
22 January.

23 Steve.

24 MR. BEST: To your Honor's point, though, this
25 specifically goes to the heart of our motion to dismiss on

1 causation, which was at the heart of our core motions to
2 dismiss, particularly since our investigation has recently
3 revealed that it is uncontradicted that at least eight of the
4 12 named plaintiffs did not -- excuse me, opened accounts with
5 Voyager prior to any statements by Mr. Cuban or announcement of
6 the sponsorship. Importantly, none of the named plaintiffs
7 participated in the Voyager sponsorship free \$100 of crypto for
8 opening up an account.

9 So at this point, along with the causation argument,
10 we have a concern as to the good faith filing of this lawsuit
11 given the statements in the lawsuit, in the complaint, that
12 each of the plaintiffs relied upon Mr. Cuban's statements to
13 their detriment. I can go through all of the paragraphs of the
14 complaint that address that.

15 THE COURT: I read it.

16 MR. BEST: It is basic causation issues.

17 THE COURT: If you already have that information then,
18 is that needed right now for the motion to dismiss? I guess
19 I'm trying to help with the scheduling of these plaintiffs. Is
20 that what you need my assistance with?

21 MR. BEST: Yes, your Honor.

22 THE COURT: OK. So then tell me, if you already have
23 that information --

24 MR. BEST: I only have it through investigation. I
25 don't have access to the plaintiffs' accounts at FT -- excuse

1 me, at Voyager, as to when they opened it. So it is all within
2 the specific possession of Mr. Moskowitz and his clients.

3 THE COURT: I see.

4 MR. WISSNER-GROSS: In addition, once we get the
5 documents, we are going to have to depose each of the
6 plaintiffs as to decisions that were made by them with respect
7 to each trade within the account.

8 THE COURT: OK.

9 MR. WISSNER-GROSS: Even if it were not the customer
10 accounts, we are going to want to find out who you're
11 relying --

12 THE COURT: What their motivations were.

13 MR. BEST: Yes, and if they redeemed, if they made any
14 redemptions during that period of time, that is another
15 causation argument.

16 THE COURT: OK. So let me ask you this. Has there
17 been discussion between the parties up to this date about these
18 depositions and setting the dates for the depositions?

19 MR. WISSNER-GROSS: We noticed them, 30 days ago we
20 noticed them, all the depositions of the plaintiffs beginning
21 on December 22nd --

22 THE COURT: OK.

23 MR. WISSNER-GROSS: -- and running through, I think,
24 early January. So we gave proposed deposition dates.

25 We offered to prioritize them, but we got a little bit

1 of a stiff arm on that. So we don't have dates yet. We do
2 need dates for depositions of all the named plaintiffs.

3 MR. BEST: So the specific request, your Honor, is for
4 in-person deposition dates, particularly of the Florida-named
5 plaintiffs in the Miami, Southern District of Florida area, as
6 soon as possible.

7 THE COURT: OK. So, Mr. Moskowitz, have you received
8 these dates that they have suggested and do your clients have
9 any concerns or objections?

10 MR. MOSKOWITZ: Thank you, your Honor. It should be
11 no surprise there is a little bit of a different background in
12 the Sig and Stephen team up on what they're saying.

13 If you look at their motion to dismiss, your Honor,
14 that's been now going for two months, you don't see the word
15 causation. Everything they're telling you today has never been
16 brought up before. I mean, it is just a matter of fact.

17 Their motion to dismiss that they want Judge Altman to
18 grant doesn't say this whole made up, oh, well, there is no
19 causation because they signed up afterwards. That is not in
20 there. So when you're asking about discovery and when you need
21 to take their depositions, it's not referenced, it's not
22 mentioned, it's not in the motion to dismiss.

23 If they're going to come up now with a new theory,
24 which I guess they can, if they want to drop their motion to
25 dismiss and say, you know what, that wasn't working and you're

1 attacking Mark Cuban because of this affidavit, we're going to
2 attack your clients, it's not in the motion, your Honor. So
3 that is why it's never been an issue.

4 They asked to take our depositions after three months
5 of us asking for Mr. Cuban, and when the stay was denied, they
6 asked for it and I said absolutely. If you want to take their
7 depositions, let's try to work out dates in February, but you
8 don't need it for the motion to dismiss because you filed your
9 motion to dismiss. You didn't rely on any testimony from the
10 clients. You don't reference any of the clients. You don't
11 state you need any testimony from the clients. So doesn't your
12 motion to dismiss speak louder than anything else.

13 So your current motion that is currently pending, it
14 doesn't rely on any statements from the plaintiffs. They're
15 saying, Mr. Cuban, that we don't have jurisdiction over him.
16 That's it. What I am saying is I am open to discussion, as I
17 told them last week for the first time. They said we want to
18 depose all your plaintiffs. I said, well, you don't need it
19 for the motion to dismiss because I don't see the word
20 causation in any of the paragraphs. So if you want to depose
21 them like in February, let's start.

22 They're located all around the country. We will try
23 to have some by Zoom because we'd like to do Zoom. A lot of
24 the pandemic is still going on. I'm happy to take Zoom of your
25 clients. So let me try to come up with a schedule in February,

1 because it has nothing to do with your motion to dismiss.

2 THE COURT: Let me ask you this, Mr. Moskowitz.

3 MR. MOSKOWITZ: Yes.

4 THE COURT: I understand, OK, even if that is the
5 case, you still have an ongoing case where submission of expert
6 reports are by February 23, 2023. Why wait until February when
7 you have how many plaintiffs to depose? It is a number of
8 them.

9 MR. MOSKOWITZ: We have a lot of them, and we just
10 were asked last week, can you give us your depositions.

11 THE COURT: OK.

12 MR. MOSKOWITZ: So with the holiday season, it is just
13 hard.

14 They can't get Mark Cuban available for three months.
15 They're trying to ask us about our clients and getting them
16 ready immediately.

17 What I said, your Honor, is I will work with them.

18 THE COURT: OK.

19 MR. MOSKOWITZ: We will try to produce some of them in
20 February. If you don't need them for your motion to dismiss,
21 why do you need them.

22 Now they're saying we are going to change our motion
23 to dismiss, we are going to raise this causation type of
24 argument, which has nothing to do with our claim, but, great,
25 I'm willing to work with them, your Honor. We can start to

1 make some available maybe the end of January.

2 These are people that live all around the country.
3 I'm happy to start making them the end of January. We're
4 making Mr. Cuban February, the first two weeks. Why don't we
5 start a couple of plaintiffs that week. I'm happy to. I mean,
6 if Mr. Cuban is going to wait six months since we first asked,
7 I don't think it is a lot to ask these people, these investors,
8 that have no money and no private jets, to at least give them
9 60 days to try to come up with dates for them.

10 So why don't I give them two or three of the
11 plaintiffs during the same time Mr. Cuban is and we'll start,
12 just like they are, on a rolling basis providing the other
13 ones. If they need more time for their motion to dismiss
14 because they can't stand on the one that they have, they can
15 ask the court for an extension of time for their motion.
16 Because we are going to both ask the court.

17 THE COURT: OK.

18 MR. BEST: Sig, why don't you respond, please.

19 MR. WISSNER-GROSS: First of all, your Honor --

20 THE COURT: Yes.

21 MR. WISSNER-GROSS: First of all, your Honor --

22 MR. MOSKOWITZ: Wait. I was going to finish one --

23 MR. WISSNER-GROSS: One thing I would ask. If you are
24 going to, and I will try to say this as politely as I can, if
25 you are going to represent facts to the court, please stick to

1 the facts.

2 THE COURT: So best thing to do, Mr. Wissner-Gross, is
3 address me rather than him. If everyone just addresses me,
4 then I think we will be OK.

5 MR. WISSNER-GROSS: The deposition notices were served
6 on all the plaintiffs on November 20th.

7 THE COURT: OK.

8 MR. WISSNER-GROSS: They were all served on November
9 20th.

10 THE COURT: So they have been outstanding for a while.
11 OK.

12 MR. WISSNER-GROSS: They have been outstanding since
13 November 20th. We served the document request around the same
14 time, approximately the same time, or maybe it was November
15 22nd. I stand corrected. The first deposition is for December
16 22nd.

17 Secondly, the motion to dismiss does reference the
18 timing of when accounts were opened. If necessary, your Honor,
19 I can give you the references. But we specifically noted in
20 the motion to dismiss that there is an open question on when
21 any of the plaintiffs opened their customer accounts, whether
22 any of them received any of the \$100 Bitcoin bonus, so to
23 speak, if they opened an account. These issues were raised in
24 the papers.

25 Mr. Best suggested, well, why don't you start, start

1 with the three Florida plaintiffs. I don't think they have to
2 get on a jet to come to Miami to be deposed. We're prepared to
3 start with those three. We're willing to prioritize the rest.

4 THE COURT: OK. So we have obviously the holiday
5 coming. Can we start in January to depose -- there are four in
6 Florida, Mr. Wissner-Gross?

7 MR. WISSNER-GROSS: Three in Florida.

8 THE COURT: Three in Florida.

9 Mr. Moskowitz, can you contact your clients in Florida
10 to see if they can be deposed in January?

11 MR. MOSKOWITZ: We can try, your Honor. The only
12 problem is we are going to have until February now probably 24
13 under this Mr. Cuban delay to either amend the complaint and/or
14 to respond to the current complaint. I don't know if they want
15 to depose people that we are not going to use as class reps.

16 Why don't they wait and see what is the operative
17 complaint on February 21st, and if we do file a new complaint,
18 we promise to make those plaintiffs available as soon as
19 possible. It kind of seems silly.

20 THE COURT: Well, because we have already discussed
21 that we are not going to wait on discovery in this case. I
22 mean, I think that is a fair way to proceed, is to work as
23 efficiently as possible.

24 You have a number of plaintiffs to depose. Let's
25 start deposing them. I understand the delay from the holiday.

1 We certainly understand that. I certainly didn't want to be
2 pushing anyone to be deposed in the middle of the holidays.

3 What about mid-January as some deposition dates
4 starting for at least the individuals that are in Florida so
5 that we can keep the case moving?

6 As far as whether they want to file an amended motion
7 to dismiss, that is up to them.

8 MR. BOIES: Your Honor, could I just make one point?

9 THE COURT: Yes, Mr. Boies.

10 MR. BOIES: We have been talking about Mr. Cuban's
11 deposition.

12 THE COURT: Yes.

13 MR. BOIES: There are obviously a lot of other
14 depositions that we are going to want to take as well. We are
15 in a situation in which, although we noticed Mr. Cuban's
16 deposition a lot earlier than they noticed the plaintiffs'
17 deposition, we are now in a situation where Mr. Cuban is off
18 into February and we are talking about having the plaintiffs in
19 January.

20 THE COURT: Well, Mr. Cuban is in February because
21 that is the only time that we understand he is available.

22 MR. BOIES: Your Honor, I have been doing this a long
23 time.

24 THE COURT: Yes.

25 MR. BOIES: I have never known anybody who was not

1 available sometime within 60 days, and I have represented
2 people who were CEOs of corporations that are a lot larger than
3 the Mavericks. If they want to be available -- nobody is
4 unavailable for 60, 90 days.

5 THE COURT: I agree.

6 MR. BEST: I don't know where the 60 or 90 days is
7 coming from. It's December 20th --

8 MR. BOIES: 60 days. 60 days.

9 MR. BEST: -- and we have spoken about February 1st.

10 MR. BOIES: We have been asking for this deposition
11 for a long time. All right.

12 MR. BEST: But, David --

13 THE COURT: Wait, Mr. Best. Remember we agreed that
14 everyone will just speak to the court, and I think that will be
15 more efficient.

16 Mr. Boies.

17 MR. BOIES: If they really want to take these
18 depositions, maybe we can start trying to schedule them in
19 January, but we will contact them, we will try to find them.
20 At the same time we want to be able to notice other depositions
21 in January as well. Maybe Mr. Cuban has to go to February, but
22 there are a lot of other people in the Mavericks
23 organization --

24 THE COURT: OK.

25 MR. BOIES: -- whose deposition we want to take. If

1 we are going to sort of move everything to try to get these
2 plaintiffs in sometime in January, let's just hopefully
3 understand that we are going to be able to take some
4 depositions, we have got some 30(b)(6) depositions we want to
5 take, and we want to be able to start those depositions in
6 January too.

7 THE COURT: OK. I think that is fair. I don't think
8 you need me to help you schedule depositions.

9 MR. BOIES: Right.

10 THE COURT: This is something that --

11 MR. BOIES: We ought to be able to do that, your
12 Honor.

13 THE COURT: -- you can do on your own.

14 I think what you needed me to do was help you get that
15 protective order in place and to get the train back on the
16 track, so to speak, and to determine what needs to be done with
17 reference to that deadline that the court has given you for
18 January 3rd.

19 So I think that if you want Judge Altman to extend
20 that date to respond to the motion to dismiss, and I'm hearing
21 there needs to be some extension, that is why I wanted to get a
22 few dates on the table, so at least when you are filing that
23 motion before Judge Altman you can tell him, well, Judge Reid
24 agreed to certain dates. That's all I want to do.

25 So you can tell the judge that we came to an agreement

1 with respect to the protective order, that we came to an
2 agreement with respect to a date for the deposition of
3 Mr. Cuban, and a date for the defendant to present any
4 jurisdictional discovery.

5 So then you need to ask the court for an extension
6 that you believe is reasonable for the parties then to be able
7 to either, if you are going to ask him to amend, to file an
8 amended, or to respond. That I am just not clear on. I am
9 just trying to do my part and not go too far afield with
10 scheduling depositions.

11 MR. KNIGHT: Your Honor, along those lines, and we
12 perfectly understand what you are saying here, because of the
13 jurisdictional issues, etc., also your comments I think were
14 right, on the Florida plaintiffs we need those dates in
15 January. They are the ones that filed in the Southern
16 District. The rest of them don't even live in the State of
17 Florida. We need all those.

18 If we can have your assistance relative to the Florida
19 dates starting in January. We threw out February 1st, 2nd,
20 3rd, 4th, whatever Mr. Moskowitz wants. If we could have
21 those, just some dates, four or five dates for all three of
22 them in January and we will continue on. We will work
23 separately, but we will need your assistance, I'm sure, to
24 getting these Florida ones based on what I've already heard
25 from counsel.

1 Sorry to jump in, but we want to keep this moving on
2 our side. Thank you.

3 THE COURT: OK. Thank you, sir.

4 So let's get some dates for the January discovery for
5 the plaintiffs. Let's put all of that in an order to Judge
6 Altman so that you can at least take care of that January 3rd
7 deadline.

8 Does that seem reasonable, gentlemen?

9 MR. MOSKOWITZ: Yes. I think we have got the
10 plaintiffs and then, as Mr. Boies said, we have got the
11 non-Maverick officials that are not lawyers. Those should go
12 forward in January. Then we have Mr. Cuban the first two weeks
13 in February.

14 So we will try to come up with a date with them, with
15 everybody, what would be a reasonable time that we would need
16 to file a motion to amend the complaint or oppose the motion.

17 THE COURT: To file an amended motion to dismiss, if
18 that is what the defendants want to do.

19 MR. MOSKOWITZ: Right. We will try to work it all out
20 ourselves without your Honor's --

21 THE COURT: I don't know about all of it. I don't
22 know if that is going to happen.

23 MR. WISSNER-GROSS: Just for clarity, the judge's
24 order provided they have to seek leave to amend. It is not an
25 automatic right. They have to seek leave to amend.

1 THE COURT: To amend the complaint, yes.

2 MR. WISSNER-GROSS: The other thing is that I
3 appreciate -- just one thing, Steve -- Mr. Boies' suggestion
4 that they can take nonparty discovery. It is really party
5 discovery of the Mavs other than Mr. Cuban in January. With
6 all due respect, we are beginning a rolling production in the
7 middle of January. I suspect that those depositions are not
8 going to happen of the 30(b)(6) witness until February.

9 I don't want the court to assume that that is just
10 definitely going to happen. I don't think that is going to
11 make any sense whatsoever. We will proceed with the most
12 dispatch that we can.

13 MR. BOIES: Your Honor, with respect, I suggest it
14 cannot be that after all the time that we have been trying to
15 get discovery we end up with the only discovery that takes
16 place, the only depositions to take place in January is of the
17 plaintiffs. Maybe Mr. Cuban is this unique individual who
18 doesn't have to show up, but it cannot be, I respectfully
19 suggest, in a fair way to proceed is that only the defendant
20 gets to take depositions in January.

21 MR. BEST: Your Honor, there is a fast-track solution
22 to this. If plaintiffs want to look at the causation argument
23 as regards their three named Florida plaintiffs and address it
24 beforehand, that there may be a significant causation problem,
25 then maybe this fast tracks all of it.

1 THE COURT: Let me understand something, first of all.
2 Is the defendant going to amend its motion to dismiss? I just
3 want to make sure I am on track.

4 MR. BEST: No.

5 THE COURT: No. OK. So I'm looking at your motion to
6 dismiss. This is the motion we are traveling on. The response
7 is due by the 3rd of January, correct. OK.

8 MR. BEST: Yes.

9 THE COURT: I just want to make sure.
10 So the motion is already filed. That's what you are
11 working with.

12 MR. BEST: Yes.

13 THE COURT: Why do you need to depose these witnesses
14 before January, the plaintiffs before January 3rd?

15 MR. BEST: Well, because it all goes to the leave to
16 take jurisdictional discovery, and in this vein the Florida
17 plaintiffs, named Florida plaintiffs here have been alleged to
18 have a causal connection to Mr. Cuban's statements in their
19 investment and losses suffered under the Voyager platform.

20 THE COURT: You have other information otherwise --

21 MR. BEST: Yes.

22 THE COURT: -- and you want to be able to flesh that
23 out.

24 Your reply is due, not January 3rd, but sometime
25 thereafter, which would be January 10th.

1 MR. BEST: The plaintiffs' reply.

2 THE COURT: Oh, the plaintiffs' reply.

3 MR. BEST: Yes, your Honor.

4 THE COURT: No. It would be the defendants' reply.

5 MR. BEST: I'm sorry. The plaintiffs' opposition and
6 the defendants' reply is due after, obviously, the plaintiffs
7 oppose, which is --

8 THE COURT: January 10th.

9 MR. BEST: Correct.

10 THE COURT: OK.

11 MR. BEST: We have just agreed with your Honor that in
12 this collaborative exercise of planning jurisdictional
13 depositions and discovery that we work with the plaintiffs on a
14 proposed order to Judge Altman.

15 THE COURT: OK. So you will need a proposed order,
16 and we are trying to just determine some dates for that. Now I
17 understand.

18 So, Mr. Boies, while I understand that it seems unfair
19 that the plaintiffs in Florida should be deposed before
20 Mr. Cuban, what we are trying to do is keep the case moving.
21 The plaintiffs need to be deposed at some point. You all agree
22 on that. And Mr. Cuban needs to be deposed at some point.
23 Everybody agrees on that.

24 Clearly he has a busy schedule, just as your clients
25 do. We are trying to do the best we can to come up with some

1 dates, and I hear you. If we can come up with dates for
2 plaintiffs, Florida plaintiffs before the end of January, let's
3 get it out of the way, and then very early in February will be
4 Mr. Cuban's depositions.

5 In that manner we can proceed to make sure that some
6 of these deadlines are not pushed back too much further,
7 because we still have further deadlines. The idea that --
8 might be comforting -- that plaintiffs shouldn't be deposed
9 until after Mr. Cuban is deposed is just not in the rule book.

10 MR. BOIES: I accept that Mr. Cuban is going to get a
11 pass. OK.

12 THE COURT: It is not a pass. He is going to be
13 deposed.

14 MR. BOIES: Temporary pass. Temporary pass. Harry
15 Bennett Williams always used to say that when you are a
16 defendant, a delay is as good as a victory; it is just not as
17 permanent.

18 I think Mr. Cuban is going to be in February. I
19 accept that. My point was that, and the reason I was reacting,
20 is the suggestion by defense counsel if somehow all the other
21 defendant depositions were not going to take place.

22 THE COURT: You're right. They can take place too.
23 They can be scheduled. Exactly.

24 MR. BOIES: Those we want to schedule in January as
25 well, your Honor. That is all I was saying.

1 THE COURT: Thank you, Mr. Boies. There is no reason
2 they couldn't be. So if you present some dates to the
3 defendants and get them scheduled, why not.

4 MR. BOIES: We will do that, your Honor.

5 THE COURT: There is no stay on discovery, as Judge
6 Altman has said.

7 MR. BOIES: Right.

8 MR. KNIGHT: Your Honor, just for a little bit of
9 clarification. The Florida plaintiffs in January, but we still
10 have the others, just take those in February and work them at
11 around the February dates of Mr. Cuban so we get all that done,
12 because it goes to jurisdiction too.

13 Just for the court's notice, the plaintiffs have asked
14 for Mr. Ehrlich's deposition as a nonparty, and we have agreed
15 to that already. That is in January. I believe it is the
16 25th. Anybody can correct me if I'm wrong.

17 So we have been cooperating with the other witnesses
18 they were working on, that they did not get dates for, with
19 other counsel. So we have been working on it with them. So
20 thank you, Judge Reid.

21 I just want to be clear that we need to take all the
22 plaintiffs, but let's start with the Florida ones, the ones
23 that at least claim they are part of the context because of the
24 jurisdictional issues. Thank you.

25 THE COURT: All right. Thank you.

1 Do we have an agreement that is clear enough?

2 MR. MOSKOWITZ: Yes, your Honor.

3 THE COURT: So I will be looking out for the
4 protective order this afternoon or this evening, correct?

5 MR. WISSNER-GROSS: You will have it shortly, your
6 Honor.

7 THE COURT: Terrific. I'm really glad to have had
8 this discussion with counsel. It is lively. I understand
9 that. I appreciate that everyone is doing what they need to do
10 to represent their client. As long as we direct our comments
11 to me, I think we can keep it on a professional level, and I
12 know that all of you are very experienced litigators and that
13 you will do your best to represent your clients' interests in a
14 professional way.

15 Thank you so much.

16 MR. KNIGHT: Your Honor, one housekeeping matter that
17 either we can address today or we can address prior to
18 Mr. Cuban's.

19 As you know, there is a lot of publicity around not
20 this case but the FTX case that Mr. Moskowitz is on. We see
21 him on TV here, everywhere. Congratulations.

22 Also on this case there is publicity. Relative to
23 Mr. Cuban's deposition, we are going to need some sort of gag
24 order relative to everybody here, relative to this case, so it
25 just doesn't end up getting tried out in the papers, the press,

1 etc., including anything Mr. Cuban testifies about that it is
2 just all over the streets.

3 Whether you want to address that today or sometime
4 prior to when we get Mr. Cuban's depo date is something
5 certainly the defendants want to address just because the
6 amount of publicity and the amount of press that's been already
7 occurring relative to Mr. Moskowitz and others.

8 THE COURT: Are you suggesting a closed deposition?

9 MR. KNIGHT: What we don't want to do is have the
10 transcript hit the streets afterwards. Yes, a closed
11 deposition, and the transcript, some sort of gag order or just
12 a gag order that --

13 THE COURT: I think the transcripts could be part of
14 the confidentiality agreement, correct? They certainly could
15 be confidential depending on what the answers are.

16 MR. KNIGHT: I think that is what we want to address,
17 your Honor.

18 MR. MOSKOWITZ: We could take this, your Honor -- it
19 is 5:30 now -- so maybe we will take this up. We have got 30
20 months. I'm sure we will be able to figure out something. If
21 not, we will bring it to your Honor's attention.

22 THE COURT: I think once you have that protective
23 order in place, you can work through that with whatever comes
24 up in the deposition to make sure that the transcript is in
25 compliance with that.

1 I will hear from you I'm sure. I will be looking
2 forward to it.

3 MR. KNIGHT: Thank you for the time you gave us today,
4 your Honor. I really appreciate it.

5 THE COURT: Have a good evening.

6 (Adjourned)

7
8 C E R T I F I C A T E

9
10 I hereby certify that the foregoing is an accurate
11 transcription to the best of my ability of the digital audio
12 recording in the above-entitled matter.

13
14 January 3, 2023

s/ Joanne Mancari
Joanne Mancari, RPR, CRR, CSR
Court Reporter
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